

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

GOOGLE, LLC and ALPHABET INC., a single employer

and

EDWARD GRYSTAR, an Individual

and

KYLE DHILLON, an Individual

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

KATHRYN SPIERS, Intervenor

and

SOPHIE WALDMAN, Intervenor

and

PAUL DUKE, Intervenor

and

REBECCA RIVERS, Intervenor

Cases 20-CA-252802
20-CA-252902
20-CA-252957
20-CA-253105
20-CA-253464

**ORDER DENYING RESPONDENT'S PETITION TO REVOKE INTERVENOR'S
SUBPOENA FOR TESTIMONY OF KENT WALKER**

On August 17, 2021, the Respondent filed a petition to revoke Subpoena Ad Testificandum No. A-1-1D81Z7L for the testimony of Kent Walker (Walker), Google's Chief Legal Officer. Counsel for the alleged discriminatees filed a response on August 22, 2021. I permitted the Respondent to submit a reply, which was filed on August 23.

The Respondent claims that Walker does not have a connection to the instant matter to warrant calling him as a witness, and that his thoughts, analyses, and mental impressions are attorney work product, and his internal communications about this case are privileged.

For the reasons discussed below, I decline to revoke the subpoena and deny the Petition.

Under Section 11(1) of the Act, the Board has broad authority to subpoena documents and witnesses during proceedings that result from charges or investigations. *American Postal Workers Union Local 64 (United States Postal Service)*, 340 NLRB 912 (2003). Section 11(1) of the Act specifically provides that the Board shall revoke a subpoena only:

[I]f in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Subpoenaed information must be produced if the information sought is “not plainly incompetent or irrelevant to any lawful purpose.”

Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 509 (1943).

In this regard, I note that the Board has interpreted the concept of relevance, for subpoena purposes, quite broadly. Thus, subpoenaed information should be produced if it relates to any matter in question, or if it can provide background information or lead to other evidence potentially relevant to an allegation in the complaint. Board Rules, Section 102.31(b); *Perdue Farms*, 323 NLRB 345, 348 (1997), *affd.* in relevant part 144 F.3d 830, 833-834 (D.C. Cir. 1998) (the information needs to be only “reasonably relevant”). While the above principles and cases specifically apply to documents, which are much more frequently the subject of petitions to revoke subpoenas, the same principles apply to testimony sought from individuals.

As to the Respondent’s first claim, that Walker does not have a connection to the instant matter sufficient to justify him being called as a witness, I first note that Walker, (as unnamed agent #2”) is specifically referenced in complaint paragraphs 8, 9, 10, and 17; allegations which also concern the alleged discriminatees. Walker is the author of part of a community blog sent in November 2019 regarding matters directly related to this case. (Jt. Exh. 7). On November 12, 2019, Walker sent employees clarifications about the Need-to-Know policy and Community Guidelines, both of which are specifically implicated in the complaint. (Jt. Exh. 10.) He also sent the employees reminders of Google’s data classification policies, and specifically so-called Need-to-Know data policies. (Jt. Exhs. 35, 36.) Alleged discriminatee Edward Grystar observed that Walker was consistently the point of contact for policies, and testified as such at the hearing. (Jt. Exh. 58.) It is reasonable to conclude that Walker may have relevant evidence to advance the intervenors’ case, and at the very least their counsel must be given the opportunity to question him about the complaint allegations naming him, and record evidence *he propounded* to a wide audience.¹

With regard to attorney-client privilege, this privilege applies to a confidential communication between attorney and client if that communication was made for the purpose of

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obtaining or providing legal advice to the client. See 1 RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 68–72 (2000); *In re Grand Jury*, 475 F.3d 1299, 1304 (D.C.Cir.2007); *In re Lindsey*, 158 F.3d 1263, 1270 (D.C.Cir.1998); *In re Sealed Case*, 737 F.2d 94, 98–99 (D.C.Cir.1984); *Fisher v. United States*, 425 U.S. 391, 403 (“Confidential disclosures by a client to an attorney made in order to obtain legal assistance are privileged.”); *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), *enfd.* 447 F.3d 821 (D.C. Cir. 2006).

The burden is on the party asserting the privilege to establish that it applies. See *EEOC v. BDO USA, LLP*, 876 F.3d 690, 695 (5th Cir. 2017); *U.S. v. Ruehle*, 583 F.3d 600, 608 (9th Cir. 2009); *Construction Products Research, Inc.*, 73 F.3d 464, 473 (2d Cir.), *cert. denied* 519 U.S. 927 (1996); *U.S. v. White*, 950 F.2d 426, 430 (7th Cir. 1991); and *In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984). “The attorney-client privilege may not be tossed as a blanket over an undifferentiated group of documents . . . The privilege must be specifically asserted with respect to particular documents.” *U.S. v. El Paso Co.*, 682 F.2d 530, 539 (5th Cir.1982).

As applied to in-house counsel, communications are privileged only upon a clear showing that the in-house attorney participated in a professional legal capacity. See *In re Sealed Case*, above, at 99 (company could shelter former vice president/general counsel’s advice “only upon a clear showing that he gave it in a professional legal capacity”). See also *U.S. v. Chevron Texaco Corp.*, above, 241 F.Supp.2d 1065, 1076 (N.D. Calif. 2002); and *Boca Investorings Partnership v. U.S.*, 31 F.Supp.2d 9, 11–12 (D.D.C. 1998). *In re Google, Inc.*, 462 Fed. Appx. 975, 978 (Fed. Cir. 2012) (same “clear showing” must be made even if the in-house attorney did not have distinct nonlegal responsibilities). As such, counsel for the intervenors may question Walker on non-privileged communications.

The work product privilege, first recognized by the Supreme Court in *Hickman v. Taylor*, 329 U.S. 495 (1947), and later codified in Federal Rule of Civil Procedure 26(b)(3), protects from disclosure written material prepared by a party or his representative in anticipation of litigation or for trial. See *Central Telephone Company of Texas*, 343 NLRB 987, 988 (2004). As the documents counsel for the intervenor seeks to question Walker about were widely disseminated to employees, they squarely do not fall into this category, and even if they did, work product privilege has been waived.

The Respondent urges application of *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986). After an exhaustive search, I could find no Board case adopting the *Shelton* criteria (which passed only on attorney work product privilege, and declined to address the issue of attorney-client privilege), or even citing to the case for any purpose. The unpublished district court cases the Respondent cites to in its petition to revoke specifically address deposing opposing trial counsel. Such is not the present situation.

Notwithstanding the foregoing, I will not permit unfocused, free-flowing, “fishing expedition” type of examinations of this (or any) witnesses. If counsel seeks to elicit evidence that does not reasonably advance her case, does not properly address anticipated defenses, raises tangential issues that would unduly prolong the trial, or poses questions that would call for privileged answers, I will welcome and rule on objections with strong consideration of the objectives of preservation of privilege and judicial efficiency.

Accordingly, and for the reasons set forth above, I DENY Respondent's petition to revoke the subpoena ad testificandum related to Mr. Walker's trial testimony.

SO ORDERED

Dated: August 25, 2021

A handwritten signature in black ink, appearing to read "Eleanor Laws", is enclosed within a thin black rectangular border.

Eleanor Laws
Administrative Law Judge

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party,

vs.

GOOGLE LLC and ALPHABET INC., a single
employer,

Respondents.

**CASE NO. 20-CA-252957,
20-CA-253105, 20-CA-253464**

**RESPONDENTS GOOGLE LLC AND
ALPHABET INC.'S REPLY IN
SUPPORT OF THEIR PETITION TO
REVOKE SUBPOENA AD
TESTIFICANDUM NO. A-1-1D81Z7L;
SUPPLEMENTAL DECLARATION
OF KENT WALKER**

The opposition brief filed by the alleged discriminatees' counsel suffers from five important defects:

- ***First***, to the extent the alleged discriminatees rely on the Community Blog Post that was posted under Mr. Walker's name (Exhibit D to the alleged discriminatees' response), it does not support their claim that Mr. Walker "was an active participant" in the at-issue disciplinary actions. As an initial matter, Mr. Walker did not author the statement. *See* Supplemental Declaration of Kent Walker, attached as Exhibit A. The blog post was authored by others, and was posted under Mr. Walker's name. *Id.* Moreover, the only portion of the blog post that even refers to any of the alleged discriminatees in this case is the two sentences that appear as paragraph 2:

2. A second person has been put on leave while the investigations team looks into why they deliberately searched for, accessed, and shared a number of confidential or need-to-know documents outside the scope of their job, after receiving prior feedback not to do so. Many of these documents subsequently appeared in the press.

Those two sentences (again, authored by others) hardly reflect actual involvement by Mr. Walker in that individual's discipline, or the underlying investigation. Mr. Walker did

not then, and does not now, have first-hand personal knowledge of the facts stated in those sentences. The point remains: Mr. Walker was not involved in the investigations of, or the disciplinary decisions related to, the alleged discriminatees. *See* Walker Declaration submitted with Google’s Petition to Revoke.

- **Second**, one of Google’s points is that counsel for the alleged discriminatees has not identified any fact that supposedly needs to be established through Mr. Walker’s testimony.¹ That is still the case, even after a thirteen-page opposition brief. Instead, the alleged discriminatees rely on nothing more than a conclusory statement that Mr. Walker “is the single thread that runs through the entire consolidated complaint.” Simply put, nothing supports that statement. Just saying it does not make it true.
- **Third**, it is notable that the alleged discriminatees still have not made any attempt to pursue a factual stipulation regarding any supposed fact that they seek to establish through Mr. Walker’s testimony. As described in *Shelton*, that failure further reflects that the alleged discriminatees are, in fact, seeking an opportunity to delve into his mental impressions and privileged communications. *See Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1330, fn. 7 (8th Cir. 1986) (finding that several factors supported that plaintiffs’ counsel was attempting to discover opposing counsel’s mental impressions on the case, including their rejection of the company’s offer to establish facts through other methods that would not run the risk of invading privilege). That is improper.
- **Fourth**, the alleged discriminatees’ opposition is strikingly devoid of Board law – and for good reason. No Board law of which Google is aware supports forcing an in-house counsel to testify on a record like this. The alleged discriminatees argue that the attorney-client privilege should not automatically apply to in-house counsel, but Google

¹ Counsel for the General Counsel determined long ago that Mr. Walker is not a needed witness, opting instead to stipulate to the limited number of points and documents that involve his name, such as his receipt of the prank emails described in Google’s Petition to revoke, and his May 9, 2019 email describing Google’s policies.

is not arguing it does. Mr. Walker's declaration, submitted with Google's Petition to Revoke, establishes his limited role vis-à-vis this case as an attorney.

- **Finally**, the alleged discriminatees' argument that the so-called "Shelton test" does not apply is incorrect. See authorities provided in Google's Petition to Revoke, p. 4. Importantly, the alleged discriminatees' opposition concedes that neither the second nor third factor of the Shelton test is satisfied here. All are required. *Shelton*, 805 F.2d at 1327.

DATED: August 23, 2021

Respectfully submitted,
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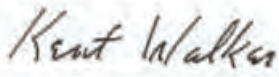
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EXHIBIT A
DECLARATION OF KENT WALKER

I, Kent Walker, do hereby declare and state as follows:

1. I have personal, first-hand knowledge of the facts set forth in this declaration and, if called upon to do so, I could and would testify competently to them.
2. I make this Declaration in support of Respondents Google LLC and Alphabet Inc.'s Reply in Support of Petition to Revoke Subpoena *Ad Testificandum* No. A-1-1D81Z7L.
3. I am the Chief Legal Officer and Senior Vice President of Global Affairs for Google. I have held those titles since 2018, before which I served as General Counsel.
4. In November 2019, I authorized and approved a community blog post that used my name concerning Google's Need to Know policy and its Community Guidelines. A copy is attached as Exhibit D to Intervener's Response to Google's Petition. The content of that post was authored by others, reviewed and approved by me, and posted under my name. With regard to the statements made in paragraph 2 of that post, which is the portion discussing an alleged discriminatee, I did not then, and do not now, have any first-hand personal knowledge of those facts.
5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of August 2021 at Palo Alto, California.



Kent Walker

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of August, 2021, I electronically filed the foregoing **RESPONDENTS GOOGLE LLC AND ALPHABET INC.'S REPLY IN SUPPORT OF THEIR PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-1D81Z7L** with the National Labor Relations Board using the agency's website (www.nlr.gov). I also certify that I have served said **RESPONDENTS GOOGLE LLC AND ALPHABET INC.'S REPLY IN SUPPORT OF THEIR PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-1D81Z7L** upon the following parties, via e-mail, pursuant to NLRB Regulation 11846.4(b):

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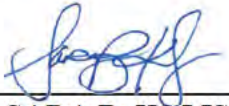
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**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, et al)	CASE NOS. 20-CA-252957, 20-CA-253105, 20-CA-253464
)	
Charging Party,	)	INTERVENERS' RESPONSE TO
	)	GOOGLE'S PETITION TO REVOKE
vs.	)	SUBPOENA <i>AD TESTIFICANDUM</i>
	)	NO. A-1-1D81Z7L (Kent Walker)
GOOGLE LLC and ALPHABET INC., a single employer,)	
	)	Hon. Judge Eleanor Laws
)	
Respondents.)	

I. INTRODUCTION

It would appear, after reading Google's Petition to Revoke the Subpoena *ad Testificandum* issued to Kent Walker, that Google is litigating an entirely different case from the one that the General Counsel and the Interveners are litigating. Google's statement of "facts" is wildly inaccurate as are its legal conclusions. Kent Walker – Google's chief legal counsel – is the one person in this matter who was an active participant in triggering all of the underlying actions that led to the termination of each Discriminatee in this matter. Walker is the single thread that runs through the entire consolidated complaint.

Nor is Walker a mere passive observer in this matter – the "butt of a joke" or prank – as Google suggests. Instead, the Record evidence that is available to Interveners thus far¹ demonstrates that Walker used his power and prestige as Chief Legal Counsel as

¹ As of Sunday, August 22, 2021, noon (Pacific) Interveners have not received any response to their July 28, 2021 subpoena. Google did provide Interveners with a massive "document dump" on Friday, August 20, 2021, which appears to be similar to the "production" that it issued to Region 20 in response to its own trial subpoena. However, this "production" is a massive

a sword to malign the Discriminatees and he now seeks to yield that same power as a shield against being compelled to testify regarding his actions. But the shield offers no more protection than the Emperor's new clothes because Walker's communications maligning the Discriminatees was made publicly to all Google employees via its "Community Guidelines" blog and was broadly shared with the entire public at large. By speaking publicly about his rationale for investigating and ultimately terminating the employment of the Discriminatees, Walker voluntarily waived any and all privileges he or Google may have held regarding these matters. As is demonstrated below, the Interveners are unquestionably entitled to examine Walker's role in the unlawful termination of their employment and in maligning their character and reputation in the community at large.

PROCEDURAL HISTORY

On Friday, August 6, 2021, counsel for the Interveners (Burgess) sent counsel for Google (Kalis) an email reminding Kalis of Burgess' intent to subpoena several Google employees – including Kent Walker – to testify at the Hearing in this matter and of Kalis' voluntary offer to accept the subpoenas on the employees' behalf. A true and accurate copy of that email communication is attached hereto as **Exhibit A**. In that email Burgess acknowledged that the counsel for General Counsel ("GC") may have separately subpoenaed some or all of these individuals (the GC has never shared its subpoena *ad testificandum* with Burgess) but that Burgess wished to preserve the right to call these individuals in her case in chief. *Id.* Burgess also offered to cooperate with Kalis regarding the timing for calling these witnesses and also stated that she might be able to

document dump that makes no attempt to properly segregate documents in any comprehensible manner.

limit the list of witnesses depending upon what Burgess learned from receiving discovery responses from Google which Burgess expected to be provided imminently. *Id.*

In that email communication, Kalis represented that the GC had agreed to refrain from calling Google witnesses during its case-in-chief and instead would wait for Google to call these witnesses first. *Id.* Burgess confirmed that she was not party to that agreement and planned to call Google witnesses in her case in chief. *Id.* No other discussion – orally or in writing – occurred between Burgess and Kalis regarding this matter until Kalis filed her Petition to Revoke on August 17, 2021. Kalis never asked Burgess why she was calling Walker as a witness and never asked to discuss the timing or scope of the testimony that Burgess intended to elicit from Walker. Nor has Kalis or the GC shared any alleged “stipulation” regarding Walker’s testimony described in (PTR at 2) with Burgess including through and including today’s date (August 21, 2021) and Burgess remains unaware that any such stipulation referred to in Google’s PTR exists.

STATEMENT OF FACTS

Google’s statement of facts implies that Kent Walker’s sole involvement in this matter was in connection to what Google now characterizes as a “prank” that led to “no discipline” of Kyle Dhillon (the originator of the “prank”) or others who participated in creating the “prank,” and that the “prank” itself “did not violate Google policy.” In fact, however, Google coercively and unlawfully interrogated Dhillon and other discriminatees regarding this “prank” and expressly include a recap of Dhillon’s involvement in this “prank” in the “FINAL WARNING” it issued to Dhillon on January 6, 2020. (See **Exhibit B**). If Google is now conceding that its coercive interrogation of Dhillon over this “prank” and its inclusion of this incident in the FINAL WARNING it issued him was

improper, Interveners will gladly consider a stipulation from Google admitting as much.

But Walker's involvement in the consolidated complaints goes well beyond serving as the recipient of the "prank" emails that Dhillon enabled fellow employees to send him. Indeed, Walker's involvement is self-evident from the face of the Complaint. He is specifically identified as the Google agent ("Unnamed agent #2") involved in the Complaint allegations ¶¶ 8, 9, 10, and 17.

One of the core allegations in the amended Complaint concerns Google's conduct of issuing new "data classification" policies regarding what Googlers – who were historically encouraged to peruse its massive data-base "MOMA" to look at absolutely any material contained therein that was not clearly marked in bold red letters "CONFIDENTIAL" – to a new system with undefined amorphous parameters. Kent Walker issued the announcement regarding this change in policy on May 9, 2019.

Googlers objected to these new standards and sought clarification regarding the intent and application of this new "policy" fearing – correctly – that in the absence of such clarification, the policy would be used to discriminatorily discipline or terminate the employment of Googlers who e.g. were engaged in union organizing campaigns and other concerted protected activity. Complaint ¶ 12, (**Exhibit C**).² They were correct. Terminated discriminatees Rivers, Waldman, Duke and Berland³ were surveilled, coercively interrogated and terminated for looking at documents in MOMA that pertained to workplace conditions that they were concerned about. Complaint ¶ 9. Specifically,

² **Exhibit C** consists of "memes" which are images (photos, cartoons, drawings) with (frequently clever or ironic) statements on them. Googlers were able to post their thoughts about Google policies via "memegen." **Exhibit C** contains a sampling of memes that Googlers submitted regarding their concerns over Walker's new community guidelines and the implementation of those guidelines to discriminatorily target employees engaged in concerted protected activity.

³ Berland is no longer a charging party in this matter.

they became aware that Google was surreptitiously planning to contract with the government to provide services that would enforce then President Trump's border control policies. Complaint ¶ 15(a)(f). Googlers believed that this action was contrary to Google's motto and contractual mandate "Don't be evil" and to call out Google if they believed Google was engaged in "evil." See Complaint ¶ 15 (b)-(h). The Googlers were also well aware that the implementation of these policies would impact the hundreds if not thousands of their fellow immigrant co-employees and the families of such employees. *Id.* In each instance, the documents that the terminated discriminatees reviewed were not marked either as "confidential" or "Need to Know" ("NTK") materials. *Id.* Instead, they all reviewed materials that were readily available and accessible to any Google employee who wished to find them in MOMA. *Id.* Two employees – Berland and Rivers – were placed on administrative leave in response to their conduct of looking at materials that were not marked "NTK" – triggering others, including Duke and Waldman – to actively coordinate protests against this action.

In response to the mounting concerns among Googlers – both regarding Google's involvement in enforcing Trump's border control policies and regarding the change in Google's "classification" policy – on November 12, 2019, Kent Walker issued a company-wide statement asserting – falsely – that Rivers "deliberately searched for and share a number of confidential or need to know documents . . . after receiving prior feedback not to do so." (**Exhibit D**). He also stated that these documents "subsequently appeared in the press" – insinuating that Rivers was responsible for leaking documents

that should only be shared internally.⁴ *Id.* Finally, Walker stated that the conduct that Rivers engaged in has “never been tolerated” at Google – again, falsely implying that Rivers had engaged in gross misconduct. *Id.* Walker also spoke in detail about his view of the terminations during a company-wide Q&A session. (**Exhibit E**).

Googlers held a rally in support of Rivers and Berland (who was also maligned in Walker’s 11/12/19 public statement) and on the next business day after the rally, the Monday of Thanksgiving week, Duke and Waldman, along with Rivers and Berland were terminated.

Discriminatee Grystar organized the aforementioned rally and drafted numerous statements raising concerns about these actions and questioning Google’s new “policy” in which Googlers were expected to somehow know that they could be terminated for looking at documents not marked “confidential” or “NTK.” *See, e.g. go/concerns-about-data-classifications-policies* and *go/concerns-about-data-classifications-policies-form* and Consolidated Complaint allegations ¶17(a), (b), and in response he and others were coercively interrogated about these actions. Complaint ¶8. Given the uncertainty and fear among Googlers regarding what (unmarked) documents they could now be terminated for looking at, Discriminatee Dhillon wrote a document suggesting that Googlers “always ask Kent [Walker]” prior to viewing any document that they were uncertain about viewing. Dhillon and Spiers ultimately turned the “always ask Kent” concept into a program (“chrome extension”) that would enable Googlers to actually send Kent Walker an email asking whether a specific document not marked as “NTK” would be *post facto*

⁴ In fact, Rivers had brought to Google’s attention that one meme that arose out of discussion regarding border control issues, appeared to violate Google’s policies regarding appropriate memes. Google refused to take down the meme that Rivers flagged as inappropriate and refused to tell her why. Rivers then sought documents that would explain Google’s meme take-down process. She was terminated for conducting that search. Complaint ¶16.

characterized by Google as “NTK” material and hence be terminated for viewing.

Complaint ¶¶ 9, 10, 17 (b)(c). It is this “always ask Kent” chrome extension that Google represents in its PTR that is the “only” matter in which Kent Walker was involved.

In furtherance of concerns regarding Google’s use of Walker’s new Community Guidelines that Discriminatee Spiers wrote a chrome extension that created a tiny “pop up” on Googlers’ computer screen reminding them – if they conducted research into the role of IRI, the union-busting firm that Google had just hired – that they had rights under Section 7 of the NLRA to engage in concerted protected activity. Spiers was terminated for this activity, Dhillon, who provided only a mechanical technical review of the chrome extension was given a “FINAL WARNING” for his role in this activity and Grystar, who only reviewed the computer language of the chrome extension was likewise disciplined for his scant “involvement” in this activity.

Thus, contrary to Google’s representation, virtually all of the unlawful activity alleged in the Complaint arise from the same *res gestae* and Kent Walker is a primary, if not *the* primary Google agent at the center of these allegations. It is in this context that we request the ALJ to review Google’s pending PTR.

LEGAL ARGUMENT

Google’s legal argument for revoking the Walker subpoena is based upon two cornerstones: (1) that as Google’s in-house counsel, Walker deserves the fundamental protection afforded to attorney-client privilege; and (2) any assessment regarding the Intervener’s right to call Walker as a witness is governed by *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986). Each of these legal premises is misplaced. Its arguments – built on a house of cards – fails to demonstrate any basis for revoking the

Intervener's legitimate and fully enforceable subpoena.

A. In-House Counsel Is Not Entitled to a Rebuttable Presumption of Attorney-Client Privilege

Google represents in the introduction to its legal argument that “[t]he attorney-client privilege applies to ‘in-house’ counsel just as it would to any other attorney. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 154 (1974). This is not accurate; where a corporation takes the step of retaining outside counsel, the nature of the relationship creates a rebuttable presumption that the law firm’s services were secured for the purpose of obtaining legal advice and in the absence of waiver would generally be privileged and protected.⁵ Because in-house counsel plays many roles, the same presumption does not apply. As (then) Circuit Judge Ginsburg explained, communications between the corporation and its in-house counsel are privileged “only upon a clear showing that [the advice] was given in a professional legal capacity.” *In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984). Applying the “presumption” of privilege to an in-house attorney as Google asks the Judge to do here, constitutes reversible error. *United States v. Chevron Corp.*, No. C-94-1885 SBA, 1996 U.S. Dist. LEXIS 4154, at *9-10 (N.D. Cal. Mar. 13, 1996).

Given the ambiguous role of in-house “counsel,” Courts and legal scholars alike have taken a critical view of corporations relying upon privilege to suppress relevant information pertaining to a corporation’s alleged unlawful conduct. *See B.F.G. of Ill., Inc. v. Ameritech Corp.*, No. 99-C-4604, 2001 U.S. Dist. LEXIS 18930, at *6 (N.D. Ill. Nov. 13, 2001) (criticizing the defendants’ “use of in-house counsel to give a veneer of

⁵ Even in such circumstances, where, as here, the privilege is waived, outside counsel can be compelled to testify regarding otherwise privileged communications. *See, e.g. Community Learning Center Schools, Inc.* (2017) PERB Order No. Ad-448 at pp. 14-15 (interpreting California State law and the Employment Education Relations Act).

privilege to otherwise non-privileged business communications”); John E. Sexton, *A Post-Upjohn Consideration of the Corporate Attorney-Client Privilege*, 57 N.Y.U. L. REV. 443, 446 (1982) (the privilege’s “staunchest proponents concede that, whenever the privilege is invoked, otherwise relevant and admissible evidence may be suppressed . . . [and] potentially hinders the administration of justice.”).

Google has failed to sustain its burden of providing a “clear showing” that when Walker, as in-house counsel, made these comments or participated in effectuating actions that led to the Discriminatees’ termination is entitled to attorney-client privilege at all. Its failure to sustain this burden is inexcusable since Google has ventured down this path before and has had its in-house counsel “privilege” arguments flatly rejected. *See In Re Google, Inc.* 462 Fed.Appx. 975, 978 (Fed. Cir. 2012)(a “clear showing” that in-house counsel was acting in legal capacity is required even where in-house counsel plays no distinct nonlegal roles for the Corporation).

B. The “Flexible Assessment” Approach Which Supersedes *Shelton* in Assessing the Right to Subpoena Counsel Firmly Supports Interveners’ Right to Subpoena Walker’s Testimony.

As noted in the Introduction Section *infra.* at 7, Google insists that under *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986) Walker cannot be compelled to testify unless Interveners demonstrate that (1) no other means exist to obtain the information than to [subpoena] opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the case. Google then offers the *non sequitur* that since it has produced no documents indicating that Walker had a role in deciding or effectuating the Discriminatees’ termination, Walker knows nothing and therefore Interveners have no basis for subpoenaing his

testimony. (PTR at 2). True enough – to date, Google has provided no written documentation that explains the rationale for Walker’s false and/or grossly misleading assertion that the Discriminatees violated company policy. But that does not mean that Walker “knows nothing.” On the contrary, Walker asserted both orally and in writing that the Discriminatees in this matter violated company policy. *See e.g.* Kent Walker’s November 12, 2019 blog on the Google-wide Community Guidelines platform (**Exhibit D**) and portions of his statements in response to a Google-wide Q&A session (**Exhibit E**).

Thus, taking Google’s counsel at their word – i.e. that “no documents exist” that record, mention or describe the basis for Walker’s false/misleading statements (PTR at 2), Google has effectively conceded that at least one of the three *Shelton* criteria for requiring counsel to testify has been met, namely that no other means (such as document production) exists to discover the basis for Walker’s false and misleading statements. The only avenue available to Interveners for finally learning the basis for Walker’s false statements is to call him to testify about this subject.

Separately, as Google’s counsel should know, the “*Shelton*” analysis that Google asks the Judge to rely upon has never been accepted as the majority approach for determining when counsel may be called to testify in a matter. As (then Circuit Judge) Sotomayor noted in *In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65, 69 (2d Cir. 2003), only the Sixth Circuit followed the Eighth Circuit’s *Shelton* analysis. In rejecting the *Shelton* rule and instead applying a “flexible approach” to this determination (then) Circuit Judge Sotomayor explained:

The deposition-discovery regime set out by the Federal Rules of Civil Procedure is an extremely permissive one to which courts have long "accorded a broad and liberal treatment to effectuate their purpose that civil trials in the federal courts [need not] be carried on in the dark." *Schlagenhauf v. Holder*, 379 U.S. 104, 114-15, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964) (quoting *Hickman v. Taylor*, 329 U.S. 495, 501, 507, 67 S.Ct. 385, 91 L.Ed. 451 (1947) (internal quotation marks omitted)). Indeed, the rules provide for the taking of discovery, including by oral depositions, "regarding *any* matter, not privileged, that is relevant to the claim or defense of *any* party" and that "[r]elevant information need not be admissible." See Fed.R.Civ.P. 26(b)(1) (emphasis added). Moreover, the rules generally do not place any initial burden on parties to justify their deposition and discovery requests. See, e.g., Fed.R.Civ.P. 30(a)(1) ("A party may take the testimony of *any person* . . . by deposition upon oral examination without leave of court.") (emphasis added); Fed.R.Civ.P. 26(c) (permitting courts to issue a protective order upon "good cause shown" by the party *opposing* discovery).

In re Subpoena Issued to Dennis Friedman, 350 F.3d 65, 71 (2d Cir. 2003). In *Shelton*, the defendant relented and agreed to voluntarily produce counsel for examination while the case was pending. But the "flexible" and more permissive approach to assessing whether counsel may be called to testify in a matter – one that "takes into consideration all of the relevant facts and circumstances" including "the need to depose the lawyer, the lawyer's role in connection with the matter on which discovery is sought and in relation to the pending litigation, the risk of encountering privilege and work-product issues, and the extent of discovery already conducted" – is the clear majority approach, not *Shelton*.

Here, numerous facts and legal argument mitigate in favor of requiring Walker to appear to testify at the hearing. First, and most obviously, Walker has waived any privilege that might have attached to his alleged attorney/client communications regarding the termination of the Discriminatees by prominently, publicly and broadly discussing his assertion that the Discriminatees violated company policy (**Exs. D, E**). Irrespective of what "hats" he wears/wore as Google legal counsel, by sharing his opinion

and beliefs on this issue. Walker knowingly waived any privileged discussions concerning these matters.

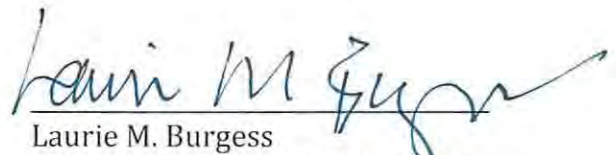
In the Declaration that Google attached to its PTR Walker swears under oath that “all knowledge that I have regarding [the discriminatees] and regarding the case comes from privileged communications and my own analysis as part of my role as the company’s legal counsel.” Again – taking him at his word – because Walker provided detailed written and oral statements to all Google employees regarding Google’s purported legitimate rationale for terminating the Discriminatees, all of the purported “privileged communications” and his analysis has been lost whatever privilege it would have had as a result of these detailed voluntary disclosures.

The Discriminatees dispute that they violated any company policies and indeed, in some instances they were told during Google’s investigative interview of them that they had not violated any policies. Yet Walker told all Google employees orally and in writing that these individuals violated company policies – simultaneously irrevocably tarnishing the reputations of the terminated employees chilling other employees from engaging in concerted protected activity for fear of receiving similar unjustified reprobation. Walker’s statements hence trigger examination under the “crime fraud” exception to the attorney-client privilege. The crime-fraud exception was established more than 100 years ago in *Alexander v. United States*, 201 U.S. 117 (1906) and has been interpreted to cover communications between an attorney and client that further a crime, tort or fraud. *See also Wigmore on Evidence* at § 2298. The NLRB has held that the crime/fraud exception may be raised in cases under the NLRA but has not held that the exception applies to violations of the NLRA. *Patrick Cudahy Inc.* 288 NLRB 968, 973.

However, here, separate from an 8(a)(1) violation Walker's actions potentially give rise to the tort of "false light" (public statement that is highly offensive and implied to be true but is actually false) and/or defamation (false statement of fact that injures one's reputation) – matters that *are* captured under the crime/fraud exception.

Finally, as the ALJ is well aware, Interveners are not privy to discovery mechanisms that exist under State and Federal Rules; instead, they are relegated to issuing subpoenas to compel production of documents and/or of witnesses at trial. Even absent "normal" discovery rights, Interveners are well aware that Kent Walker played a critical role in determining and publicly announcing that the Discriminatees purportedly violated company policy. The Interveners are entitled to question Walker about the basis of these false claims and respectfully request that the Judge DENY its pending Petition to Revoke the Subpoena of Kent Walker.

Respectfully submitted,

A handwritten signature in blue ink, reading "Laurie M. Burgess", with a long, sweeping horizontal line extending to the right.

Laurie M. Burgess
lburgess@burgess-laborlaw.com
Burgess Law Offices
498 Utah St.
San Francisco, CA 94110
(312) 320-1718

Dated: August 22, 2021

Exhibit A



I burgess <lburgess@burgess-laborlaw.com>

(no subject)

1 message

I burgess <lburgess@burgess-laborlaw.com>

Sat, Aug 21, 2021 at 8:19 AM

To: I burgess <lburgess@burgess-laborlaw.com>

From: I burgess <lburgess@burgess-laborlaw.com>

Date: Sun, Aug 8, 2021 at 2:09 PM

Subject: Re: Subpoena ad testificandum

To: Kalis, Sara <sarakalis@paulhastings.com>

Cc: Fox, Cameron W. <cameronfox@paulhastings.com>, Latham, J. Al <allatham@paulhastings.com>

Sara - it's difficult to give an estimate at this time. I'll have a much better sense of timing, etc. once we receive your discovery responses.

Thanks,
Laurie

Sent from my iPhone

On Aug 8, 2021, at 5:32 AM, Kalis, Sara <sarakalis@paulhastings.com> wrote:

Laurie,
Thank you for clarifying. For timing purposes, how long do you anticipate your case will take?
Thanks,
Sara

Sara Kalis
Paul Hastings
sarakalis@paulhastings.com
952-240-4558

On Aug 7, 2021, at 5:44 PM, I burgess <lburgess@burgess-laborlaw.com> wrote:

Thanks, Sara. It's my intent to call Google witnesses during my case in chief.

Sent from my iPhone

On Aug 7, 2021, at 1:00 PM, Kalis, Sara <sarakalis@paulhastings.com> wrote:

Laurie,

Thank you for your email. Google will accept service of these subpoenas, of course without waiving its right to seek a Petition to Revoke.

When you say you want to cooperate regarding the timing of their discovery, can you please clarify? I

believe you know that the Region is not calling any of the individuals they subpoenaed in their case-in-chief, but are instead allowing them to be called by Google first. Is that not your intent?

Thanks,
Sara

<<http://www.paulhastings.com/>>

<image001.png><<http://www.paulhastings.com/>>

Sara B. Kalis | Of Counsel

Paul Hastings LLP | 200 Park Avenue, New York, NY 10166 | Direct: +1.212.318.6021 |

Cell: +1.952.240.4558 | Fax: +1.212.319.4090 | sarakalis@paulhastings.com<

<mailto:sarakalis@paulhastings.com>> | www.paulhastings.com<<http://www.paulhastings.com/>>

From: I burgess <lburgess@burgess-laborlaw.com>

Sent: Friday, August 6, 2021 6:23 PM

To: Kalis, Sara <sarakalis@paulhastings.com>

Subject: [EXT] Subpoena ad testificandum

Sara - greetings. When we previously spoke about issuing subpoena ad testificandum you mentioned that you would be willing to accept service for some of the individuals I listed. I believe that the Region may have already issued subpoenas to some of these folks but I do have my own set of subpoenas to issue. At this time I plan to subpoena Kent Walker, Brad Fuller, Stephen King, Heather Adkins and Thomas Kurian.

I am glad to try to cooperate with you about timing of their testimony. I will be able to provide you with a better sense of that once we receive discovery responses. It's possible that after receiving those responses I decide not to call some of these individuals at all.

Please let me have your thoughts about this at your earliest convenience.

Thanks,
Laurie

p.s. you might alert your secretary/assistant that there is a new heading for the cases and that Amr can be dropped from the service list. Not a big deal but going forward it might eliminate confusion.

Laurie M. Burgess, Attorney
(312) 320-1718 (cell)

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Laurie M. Burgess, Attorney

(312) 320-1718 (cell)

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

Please take notice that this 22nd day of August, 2021, the undersigned e-filed the attached **Interveners' Response to Google's Petition to Revoke Subpoena Ad Testificandum No. A-1-1D81Z7L (Kent Walker)** with Region 20, and Division of Judges, Honorable Administrative Law Judge Eleanor Laws, a copy of which is hereby served upon you.

Charged Party / Respondent

Legal Representative
Latham, Al
Paul Hasting LLP
allatham@paulhastings.com

515 South Flower Street
25th Floor
Los Angeles, CA
90071-2228

Charged Party / Respondent

Legal Representative
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Charged Party / Respondent

Legal Representative
Distelburger, Eric
Paul Hastings LLP
ericdistelburger@paulhastings.com

101 California St Fl 48
San Francisco, CA
94111-5871

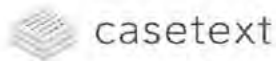
Charged Party/Respondent

Legal Representative
Sara Kalis
sarakalis@paulhastings.com

200 Park Avenue
New York, NY
10166

Charging Party

Legal Representative, CWA
Patricia M. Shea
pats@cwa-union.org



JX

Search

Help

Sign In

Sign Up

The Respondent violated Section 8(a)(3) and (1) of the Act by unlawfully terminating Keith Ludlum on February 3, 1994.

(e) Lawanna Johnson

Lawanna Johnson worked for the Respondent from November 1992 to November 1993 in the conversion department on the cut floor. She was on the employees' union organizing committee and her name was included in the letter which was sent to the Respondent noting that fact. Lawanna Johnson testified that the letter (CP Exh. 3), was posted in the plant in several locations; that her supervisor, Marty Hast, told her in the presence of other employees that he had seen her name on the letter for organizing for the Union and the Company did not want the Union in the plant; that in early 1993 she attended a meeting conducted by Henry Morris who she believed was the plant superintendent at the time; that when Morris said that the Company had an open door policy and would be willing to work with the employees on any problem she stood up and spoke out saying that "this is a bunch of bologna, a bunch of lies. They're [sic] not an open door policy. They're [sic] not going to do anything for us";⁷⁷ that she did not recall anyone else standing up and speaking out at this meeting; that shortly after the meeting Hast told her she had to do the floor twice by herself when normally there would be two men on that job; that her normal job at the time was skinning and packing ribs and she had never been assigned this cleaning job before; that in the spring of 1993 she applied for different jobs seeking higher pay but she did not get any of the jobs; that Harold Allen, who was a supervisor in the department next to hers, told her during a break that she could not get another position because everyone knew that she was for the Union;⁷⁸ that in July 1993 she did get a blade job (cutting the meat from the bones) unofficially when she switched with another lady who was having a problem with her hands, but she did not get the higher pay for the job; that when she asked about the pay Hast told her she was not qualified for the position; that Hast did tell her that he thought she was doing a good job; that she got a job on the cut floor working under Dale Smith; that she experienced problems with her hands on the blade job; that she saw the company doctor who told her that it seemed like she had carpal tunnel syndrome; that she took time off from work because her hands were swollen and ached and she had to take medication; that she also missed time from work when her husband was sick with deterioration of the lung tissue and had to be taken to the hospital; that on September 9, 1993, she attended a union cookout and she saw some of the [redacted] there but she could not recall their [redacted] 1993, Cut Floor Superintendent [redacted] he had heard that she

was making racial s around September 21 doctor's note to her eated that she was t from "9-21-93" thro told her that she shot completely released b 1993, and he gave he able to return to emp she brought this secc was the head of hum returned to work or chance agreement (G husband had a breath dent to let them kno hospital and she wo Respondent's policy the shift they called i husband to the hospit was the one in Fay County Hospital; th returned home and sl band, asking him to know that they were point in going to wor the following day, Ne speaking with Larry last-chance agreemen spoken with her hus why she had not s walked in her termin husband had been ill spondent ever told he she never saw anythi

On cross-examina had never seen a won cleaning the floor by sion; that she could r attended the union co the plant they worke Company and told th tober 11, 1993; that s Company; that she w letter of termination; sences were due to t spondent's plant, nar name of her husband gan having major pro she took her husband and they returned hor

⁷⁷ Henry Morris testified that he did remember an employee standing

Exhibit B

To: Kyle Dhillon
Date: January 6, 2020
From: Ben Johns
CC: Jeff Gilbert, Hartwig Adam
Kibra Yemane, People Consultant
Kimia Busse, People Partner
Re: Final Written Warning

Contains Confidential Information

Kyle,

As you are aware, Global Investigations and Ethics & Compliance recently investigated concerns regarding the unauthorized emergency rapid release of a modification to the Security and Privacy Policy Notifier Chrome Browser Extension. The modification was created by a Software Engineer and was approved via a "LGTM" (Looks Good To Me) by you. It was determined that you knowingly and intentionally gave your LGTM approval for the pop-up using the Security and Privacy Policy Notifier for messaging that was neither a security nor a privacy reminder, without business justification. Your actions were found to be in violation of Google's policy, including the Basic Security Policy and the Change Management Security Policy. The details of that investigation were discussed with you on December 13, 2019 and were based on a recommendation by the the Access Review Committee that was approved by your Senior Director, Blaise Aguera y Arcas.

Your behavior in this situation was found to be inappropriate, and in violation of the Basic Security Policy, the Change Management Security Policy. You have been advised to review the above linked policies and re-read the Standards of Conduct Policy. Please ensure that you are clear on what is required to comply with them going forward. In addition to the above, your leadership wants to ensure that you are following Google's established rules regarding the kinds of approvals that require business justification. As part of your return from administrative leave, there will be a suspension of your change list approval privileges. The details of that suspension will be communicated to you in due course.

In addition, there was a review of your conduct concerning the creation of the "always-ask-Kent" extension. The Ethics & Compliance team concluded that, based on the

clear on what is required to comply with them going forward. In addition to the above, your leadership wants to ensure that you are following Google's established rules regarding the kinds of approvals that require business justification. As part of your return from administrative leave, there will be a suspension of your change list approval privileges. The details of that suspension will be communicated to you in due course.

In addition, there was a review of your conduct concerning the creation of the "always-ask-Kent" extension. The Ethics & Compliance team concluded that, based on the facts found, there had not been a policy violation with respect to that extension. The team explained to you, however, that the use of that extension had the potential of violating the Standards of Conduct Policy by unreasonably interfering with executive team members' productivity or other legitimate goals. But that had not occurred in this instance.

This final written warning is to remind you that as a Google employee, you are expected at all times to act in a way that is consistent with our security policies. Copies of the relevant portions of the policies cited above are attached, to which you have access. Please read these and ensure that you are clear on what is required to comply with them going forward.

In addition, you understand that if you violate Google policy or otherwise engage in inappropriate conduct in the future, you could be subject to additional disciplinary action up to and including termination of employment.

If you have any questions concerning this document, please contact People Consultant, Kibra Yemane who can speak with you whenever the need arises.

ACKNOWLEDGMENT:

I acknowledge that I have read the above memo and have received a copy.

Kyle Dhillon

Date

Exhibit C

Oct 22, 2019, 7:28 AM

"We've been tasked by the C-suite team to provide a chrome extension that makes it easier for Googlers to follow policies."

HOW TO BUILD A DYSTOPIAN WORLD

👍 +979 💬 ☆



Template [how_to_build_a_dystopian_world](#)

Context <https://docs.google.com/document/d/1Xr-dCb29WfHCugjHOZiNPEW835fhNDkT8Fc96mtRqiw/preview>

Oct 24, 2019, 4:40 PM

Who made the design doc private?



+187



Template

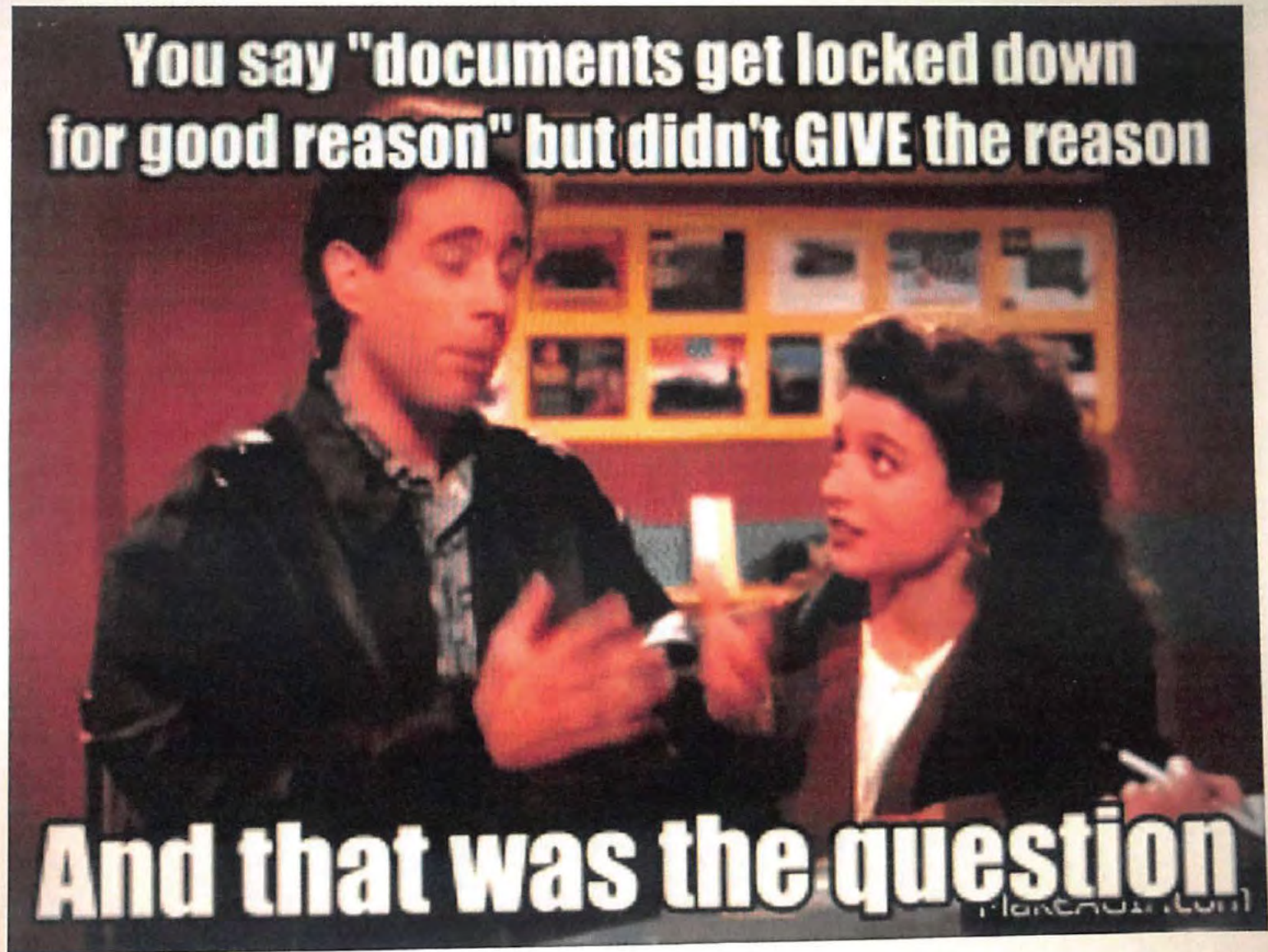
[dontknow](#)

Comments (2)

Metrics

Oct 24, 2019, 4:43 PM

**You say "documents get locked down
for good reason" but didn't GIVE the reason**



And that was the question



+904



Nov 2, 2019, 1:48 PM



👍 +156 💬 ☆



Template

[hawtch_hawtchers](#)

Context

[go/community-guidelines-in-action](#)

Nov 15, 2019, 5:45 PM



**We've clarified our
longstanding policies**

**Pray that we don't
clarify them any further.**

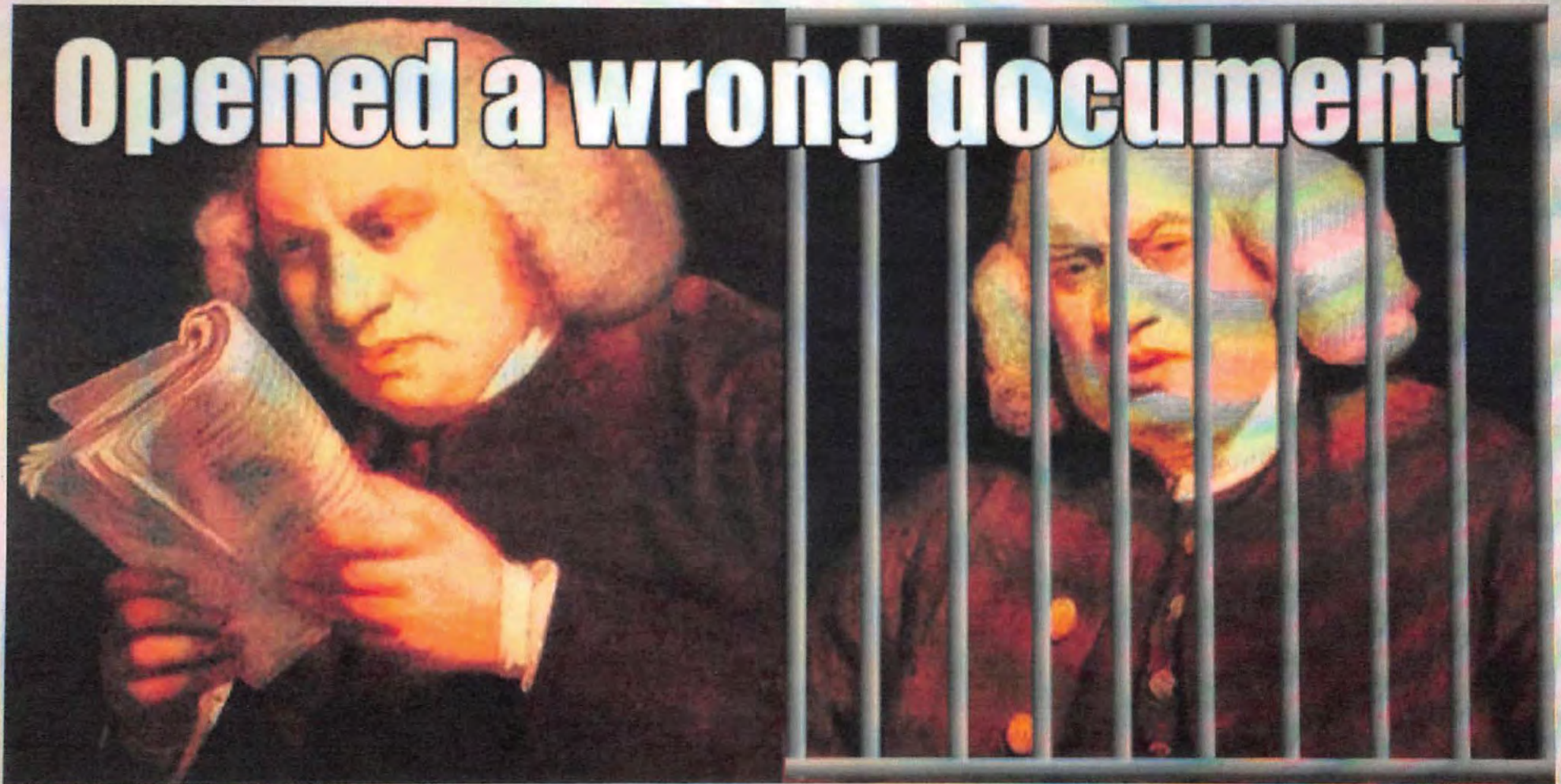


+999



Nov 13, 2019, 9:49 AM

Opened a wrong document



+1093



Nice union you got there

**It would be a shame if all the
unmarked documents the
organizers accessed were
retroactively made need-to-know**

**Some recent communications from
execs are being designed to
deliberately blur lines.**

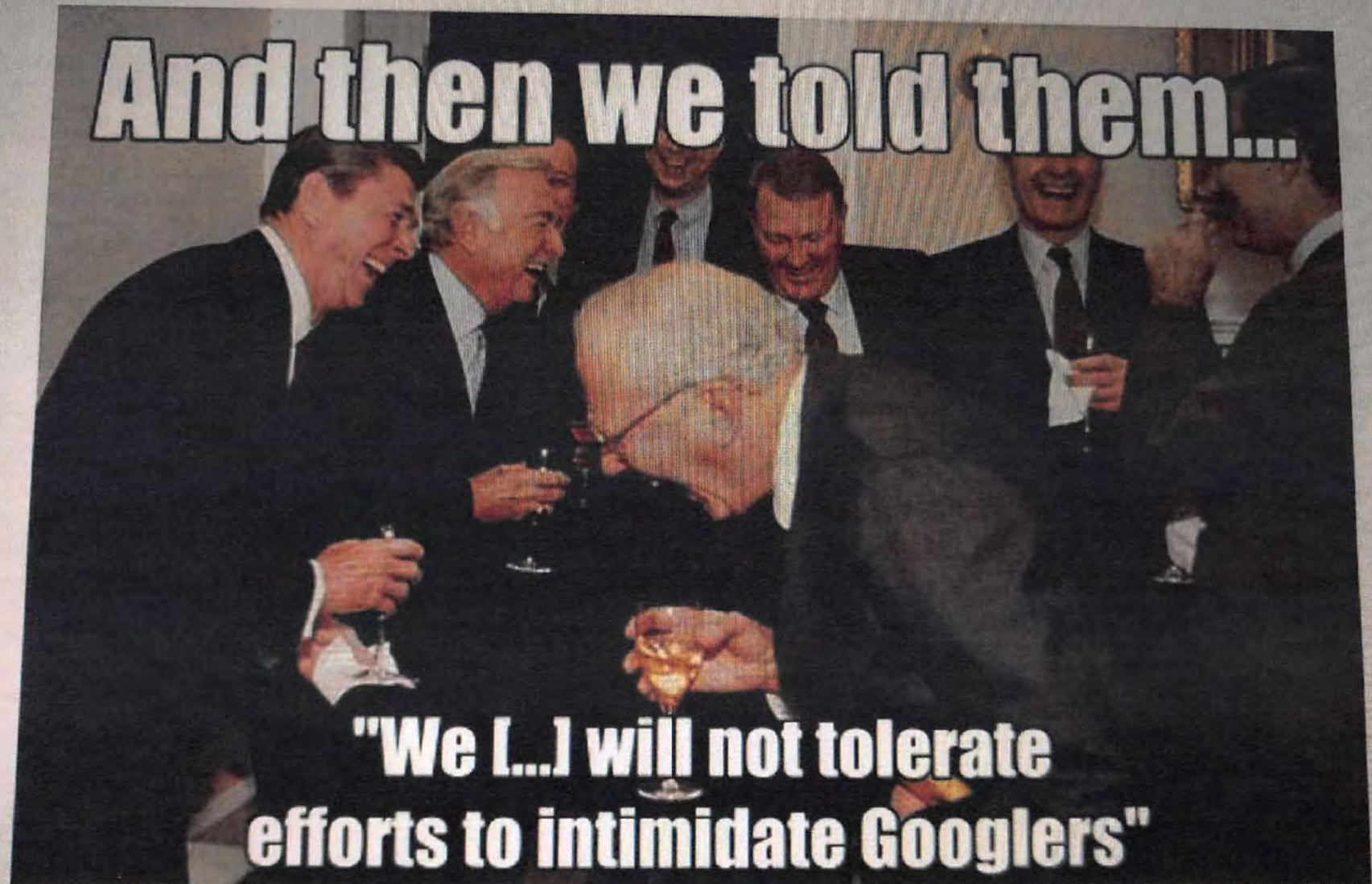
**And scare people into thinking
twice about questioning anything.**

**Fear of retaliation among Googlers
will mean Maven 2 or other controversial
projects can go ahead easier**



+454





+126



Template

[laughing_bosses](#)

Context

<https://groups.google.com/a/google.com/forum/#!topic/google/h718P1gvWTs>

Exhibit D



By Kent Walker

I understand a few people are talking about our Need to Know policy and our Community Guidelines. Sharing information is obviously important to Googlers and Google. Our guidelines in this area are designed to provide clarity on how we can get, share, and secure the information we need to do our work. These are of course fine things to discuss, but there are some inaccurate theories circulating, so while we generally don't provide details of personnel decisions, I wanted to provide some background facts.

First, no one was put on administrative leave for merely accessing or opening a single need-to-know doc. We do carefully and thoroughly investigate and take action against violations of our policies, particularly when they result in wide sharing of confidential material, external leaks of internal-only material, or behavior that makes our employees feel unsafe. To be specific:

1. An individual was recently terminated for leaking Googlers' names and personal details to the media. This sort of thing is simply not ok. We've seen leaks of emails, internal discussion threads, live TGIF discussions, MOMA screenshots, calendar invites, and more, as a way of criticizing fellow employees or developments at Google. For example, not only did the content of a recent TGIF leak, but we got an email from a reporter following a recent Social TGIF (i.e., where people get together to socialize and snack) asking why our internal calendar invite didn't include "the usual link" to enable people to remotely access it (the reporter wrote "this does appear to be the case based on screenshots I saw of the prior calendar invite and the most recent one").
2. A second person has been put on leave while the investigations team looks into why they deliberately searched for, accessed, and shared a number of confidential or need-to-know documents outside the scope of their job, after receiving prior feedback not to do so. Many of these documents subsequently appeared in the press.
3. A third person has been put on leave while we investigate a series of actions they took, including tracking a wide range of individual calendars of folks on the Community Platforms, POps, and Comms teams, causing a lot of stress for people who are just trying to go about their work.

I've seen some comments saying that our approach to these things has changed, but I've been here a long time, and I can tell you that Google never tolerated this type of behavior. If we live up to our goals as a company, we have the potential to develop incredible products and services that can help billions of people around the world. While it's great to have constructive disagreements, we can't let internal wrangling get in the way of that mission. We need an environment that lets us work well with each other on our shared goals.

Community Guidelines Policy [11/12/2019]

By Kent Walker

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Exhibit E

REDACTED - SBI/NR

All right. Let's get the presenters up. Come on up. And let's switch to dory.

All right.

Many Googlers are concerned with the updates to the data clarification policies. Especially when it comes to their impact on Google's open culture. Could you please clarify and reword those policies?

Kent is here.

>>Kent Walker: Hey, guys. Are we live? There we go.

So it was my announcement that came up, so I wanted to come and chat with people about this. Thank you for the question and the chance to clarify. There have been some misunderstandings about what the policy does and doesn't say.

So first off, it's important to note that we've always had formal policies on sensitive data

formally since 2007 and always had policies around data security. It's never been okay to use or share this kind of data, user data, customer data, without authorization, whether it was labeled or not. And we actually have fired people who have inappropriately accessed sensitive data, user data, privacy information, et cetera, where there wasn't a business justification for doing that.

The rule here is pretty simple: Don't use data that was meant for a specific purpose for anything other than that purpose.

At a company our size, we need to have rules of the road to make sure we're all on the same page about this sort of stuff. We have a lot of new people coming in -- welcome, Nooglers -- and many others who may not be aware of the policy. So we wanted to make sure that it was broadly understood. We obviously have had some leaks of both confidential information and need-to-know information, and we're now working both directly and indirectly on a lot of new areas, whether that's health care or financial services, et cetera, where we and our partners have responsibilities legally and contractually and to end users, to patients, to keep information confidential.

So when we write our policies to deal with this huge number of different things that Google is involved in, we try to write them in a short and a simple and a non-bureaucratic way, treating all -- all of us as smart, reasonable people. We don't want to be one of those companies with a 300-page manual where you have, you know, one form for stapler requisitions -- and I can't remember the office space example, the form 87J, and here's their records retention requirement and here's exactly how it's characterized. We want to have 1-, 2-, 3-page policies, with some illustrative examples, and let you use your common sense to make the right decision.

So given our evolving business, it probably wouldn't work anyway to have incredibly granular descriptions of everything we do. So when we update these policies, we're typically adding examples and doing things that are exactly meant to clarify the purpose. We want to keep the wording simple and clear.

I've actually gone back and looked at the examples in this policy, and I think they are representative of the kinds of documents that we have in mind.

We never required everybody in the company to label every document you create. That wouldn't be feasible or manageable. And, again, many kinds of information are obviously need-to-know or confidential.

It helps to have a label. It helps to avoid accidental access and the like. But, again, we look to you guys to use your common sense, to evaluate the nature of the information, just like we always have.

So we interpret these policies reasonably. We're not gonna fire somebody for accidentally stumbling across a need-to-know document. Come on. That would be silly. We spend a lot of time and effort to find and bring in some incredibly talented people.

On the other hand, if somebody trolls through a bunch of other people's documents, seeking what's obviously need-to-know information, and there's not a justified business purpose for it, that's pretty obviously a different deal.

So bottom line: If you come across something that you reasonably think is need-to-know material, but you're not sure, check with the author of the team. We have had questions already of the security and privacy team, that alias SP@, to ask questions about? What about this

category of document or that category of document? That's great. That's a really good way to answer any follow-up questions you might have.

So thanks for your work on this.

[Applause]

>>Sundar Pichai: All right. You may want to stay. I think there's one more question.

We're having less TGIFs. Reading other teams' slides and design docs can lead to disciplinary action.

I think Kent clarified that part.

More than ever we get to know of our new products from the press earlier than from our peers. How can we ensure we don't instill a fear of information that hurts innovation?

>>Kent Walker: Yeah. So we share this goal, right? We want to have an open and transparent and collaborative kind of environment as we work on these issues. And at the same time, it's important that we have a clear understanding about how information can be shared and, you know, what information is appropriate to share freely. That's why we need those rules of the road I talked about a moment ago, precisely because leaks of information can erode the kind of trust that allows us to collaborate.

So in a sense, I mean, this is -- I come to pretty much every TGIF. And we, Sundar, other leaders, take some hard questions. And we try our best to give you straight answers to those questions, because that's how we think we should operate. You may not always agree with every answer you get, but that's okay too. We may make mistakes. None of us is perfect. But when you leak about our business, that's corrosive. That undermines the spirit of trust that lets us work together so well.

So ask us the tough questions, but please don't leak. Thanks.

[Applause]

>>Sundar Pichai: Thank you.

The only thing I would add is, I think a lot of what is originating all this is we generally deal with very confidential user data. Historically, we've always understood how sacred consumer data is but, you know, when we talk about respecting our users, increasingly our users are other companies, other institutions, and we make representations, legally, contractually, about how their data can be shared within Google, right? And so I think it's incredibly important to get this right so that we can actually honor the contracts we sign with customers as well.

But appreciate the question. I think it was a good discussion, and I'm sure we'll continue clarifying it.

REDACTED - SBI/NR

NOTICE OF FILING AND CERTIFICATE OF SERVICE

Please take notice that this 22nd day of August, 2021, the undersigned e-filed the attached **Interveners' Response to Google's Petition to Revoke Subpoena Ad Testificandum No. A-1-1D81Z7L (Kent Walker)** with Region 20, and Division of Judges, Honorable Administrative Law Judge Eleanor Laws, a copy of which is hereby served upon you.

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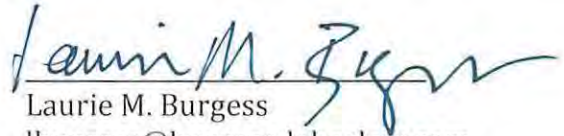
Tracy Clark
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Richard McPalmer
Richard.McPalmer@nlrb.gov

National Labor Relations Board

CERTIFICATE OF SERVICE

I, Laurie M. Burgess, Burgess Law Offices P.C., certify that this 22nd day of August, 2021, served a copy of the foregoing **Interveners' Response to Google's Motion to Revoke Subpoena *Ad Testificandum* No A-1-D81Z7L (Kent Walker)** on the above parties of record, by and through their counsel, by sending a copy of same via email (lburgess@burgess-laborlaw.com) to their individual email addresses above.

Dated: August 22, 2021

A handwritten signature in blue ink, appearing to read "Laurie M. Burgess", is written over a horizontal line.

Laurie M. Burgess
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Burgess Law Offices
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San Francisco, CA 94110
(312) 320-1718

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

GOOGLE, LLC and ALPHABET INC., a single employer

and

EDWARD GRYSTAR, an Individual

Cases 20-CA-252802

and

KYLE DHILLON, an Individual

20-CA-252902

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-
CIO

20-CA-252957

20-CA-253105

20-CA-253464

and

KATHRYN SPIERS, Intervenor

(20-CA-253105;

20-CA-253464)

and

SOPHIE WALDMAN, Intervenor

(20-CA-252957)

and

PAUL DUKE, Intervenor

(20-CA-252957)

and

REBECCA RIVERS, Intervenor

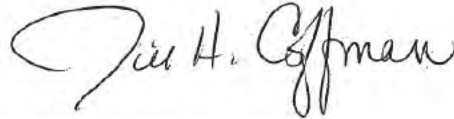
(20-CA-252957)

**ORDER REFERRING PETITION TO REVOKE
SUBPOENA DUCES TECUM TO ADMINISTRATIVE LAW JUDGE**

A Petition to Revoke Subpoena Duces Tecum A-1-1D81Z7L having been filed with the
Regional Director on August 18, 2021 by counsel for Respondent,

IT IS ORDERED, pursuant to Section 102.31(b) of the Board's Rules and Regulations,
that the Petition is hereby referred to the Administrative Law Judge for ruling.

Dated: August 18, 2021

A handwritten signature in black ink, reading "Jill H. Coffman". The signature is fluid and cursive, with the first name "Jill" being more prominent.

JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

**GOOGLE, LLC AND ALPHABET INC., A
SINGLE EMPLOYER**

and

Case 20-CA-252802

EDWARD GRYSTAR, an Individual

**AFFIDAVIT OF SERVICE OF: Order Referring Petition to Revoke Subpoena Duces
Tecum to Administrative Law Judge, dated August 18, 2021.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 18, 2021, I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

Sara Kalis , ESQ.
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Laurie M. Burgess , Counsel
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San Francisco, CA 94110-1435

August 18, 2021

Date

Donna Gentry, Designated Agent of NLRB

Name

/s/ Donna Gentry

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party,

vs.

GOOGLE LLC and ALPHABET INC., a single
employer,

Respondents.

**CASE NO. 20-CA-252957, 20-CA-
253105, 20-CA-253464**

**RESPONDENTS GOOGLE LLC AND
ALPHABET INC.'S PETITION TO
REVOKE SUBPOENA AD
TESTIFICANDUM NO. A-1-1D81Z7L**

I. INTRODUCTION

Counsel for the alleged discriminatees has served subpoenas *ad testificandum* for five witnesses at the upcoming hearing. Four of the five subpoenas present no issue. But the fifth subpoena¹ – which seeks live hearing testimony by Google’s Chief **Legal** Officer, Kent Walker – is improper and should be revoked for two reasons.

First, Mr. Walker was not a participant in (or even a witness to) any of the disciplinary decisions at issue. He has no connection to this case, aside from his name coming up in the context of a 2019 prank led by alleged discriminatee Kyle Dhillon. Specifically, Dhillon and others helped create a way for Google employees to have their computers send an automatically-generated email alert to Mr. Walker’s company email address every time that each employee opened any internal Google document. Dhillon was not disciplined (nor was anyone else) – the prank did not violate Google policy. Mr. Walker was not involved in the investigation, or any decisions regarding Google’s response to the prank. *See* Declaration of Kent Walker, attached as Exhibit A. Against this background, there is no basis for subpoenaing him to testify.

¹ Subpoena *Ad Testificandum* No. A-1-1D81Z7L was issued and served on August 10, 2021. A copy is attached as Exhibit B.

Second, Mr. Walker's role is that of legal counsel (he is the most senior attorney in the company). To the extent he has knowledge about this case more generally, his thoughts, analyses, and mental impressions are attorney work product, and his internal communications about this case are privileged. In light of that, he is not the kind of witness who can, or should, be forced to appear for an examination that is likely to become a fishing expedition.

For both of these reasons, the subpoena should be revoked.

II. ARGUMENT

A. Mr. Walker Had No Involvement in the Disciplinary Decisions at Issue In This Case; There Is No Basis For Subpoenaing Him To Testify

This case is about Google's disciplinary decisions in response to the behavior of six former and current employees: Paul Duke, Rebecca Rivers, Sophie Waldman, Kathryn Spiers, Kyle Dhillon and Eddie Grystar. Mr. Walker had no involvement in any of those decisions. That was established long ago by the thousands of pages produced by Google during this case, which show the names of those who were involved. (Mr. Walker is not named even once.) Mr. Walker's lack of involvement is now further established by his Declaration. (Exhibit A.) On this record, there is no basis for his testimony to be subpoenaed.²

Notably, Counsel for the General Counsel realized quickly that Mr. Walker was not needed as a trial witness, and chose not to subpoena him – opting instead for a simple stipulation as to Mr. Walker's receipt of the prank emails described above. Counsel for alleged discriminatees knows of that stipulation, and Google has offered to consider additional factual stipulations that can obviate the need for Mr. Walker to appear. As of the date of this filing, counsel for the alleged discriminatees has not identified any fact that supposedly needs to be established through Mr. Walker, and yet also refuses to withdraw the subpoena.

² Under 29 C.F.R. § 102.31(b), a subpoena should be revoked if “the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings”

B. To The Extent Mr. Walker Knows Anything About This Matter, It Is In His Role As Legal Counsel; His Knowledge And Internal Communications About This Matter Are Absolutely Privileged

Given Mr. Walker’s lack of involvement in any of the underlying events, his only knowledge of this case comes from his role as the company’s legal counsel – specifically, through his privileged communications with other Google attorneys and members of Google management, and as a function of his own analyses and mental processes, which are attorney work product. Mr. Walker cannot be required to divulge either one at this hearing.

As a threshold matter, it is well-established that the attorney-client privilege applies to “in-house” counsel just as it would to any other attorney. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 154 (1974). The Board recognizes the attorney-client privilege as “fundamental,” noting that “[w]ithout the protection afforded by this privilege, the open communication necessary for accurate and effective legal advice would be virtually impossible.” *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), *enf.* 447 F.3d 821 (DC Cir. 2006). The purpose of the attorney-client privilege is to ensure and encourage complete disclosure of information and communication between counsel and clients, promoting the ultimate observance of the law and administration of justice, and protecting the ultimate broader public interest at stake. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (“The attorney–client privilege is the oldest of the privileges for confidential communications known to the common law.”)

Federal law is clear that “[a] subpoena may not be used by a party to obtain privileged information.” 9A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 2458 (3d ed. 2008). As a result, privilege is one of the established bases for seeking revocation of a subpoena. *NLRB v. Interbake Foods, LLC*, 637 F.3d 492, 497 (4th Cir. 2011) (the reasons for subpoena revocation “include not only those that are immediately apparent on a subpoena’s face but also those that can be determined through reference to authority, for instance the evidentiary rules of *privilege*”) (emphasis added). *See also*, 29 C.F.R.

§ 102.31(b) (a subpoena should be revoked “if for any other reason sufficient in law the subpoena is otherwise invalid”).

Mr. Walker was Google’s Chief Legal Officer for all of the time periods at issue in this case, and still occupies that role today. As such, efforts to force him to testify are subject to the so-called “Shelton test,” which was first set out in *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986). Under *Shelton*, legal counsel should only be called to testify under limited circumstances in which “the party seeking to [call the attorney as a witness] has shown that (1) no other means exist to obtain the information than to [subpoena] opposing counsel; (2) the information sought is relevant and nonprivileged; **and** (3) the information is crucial to the preparation of the case.” *Id.* (citations omitted) (emphasis added); *see also M.A. Mobile Ltd. v. Indian Inst. of Tech. Kharagpur*, 2014 U.S. Dist. LEXIS 26376, at *6 n.1 (N.D. Cal. Feb. 28, 2014) (“the *Shelton* test is widely accepted in this district”); *Natural Alternatives Int’l, Inc. v. Creative Compounds, Inc.*, 2016 U.S. Dist. LEXIS 175231 (S.D. Cal. Dec. 16, 2016) (“our district has routinely applied the [*Shelton*] test to situations where, as here, a party seeks to take the deposition of opposing counsel”); *Stevens v. Corelogic, Inc.*, 2015 U.S. Dist. LEXIS 165874 (S.D. Cal. Dec. 10, 2015) (“courts in this district and elsewhere in the Ninth Circuit recognize *Shelton* ... and follow the three-factor test laid out in the case.”).

None of the three circumstances required under *Shelton* is present here, let alone all of them. Moreover, the fact that counsel for the alleged discriminatees insists on Mr. Walker’s live testimony despite Google’s offer to enter into an appropriate factual stipulation (as Google already has done with counsel for the General Counsel) speaks volumes about the intent behind this particular subpoena. *See Shelton*, 805 F.2d at 1330, fn. 7 (several factors supported the argument that plaintiffs’ counsel was attempting to discover opposing counsel’s mental impressions on the case, including their rejection of the company’s offer to establish facts through other methods that would not run the risk of invading privilege).


III. CONCLUSION

As shown above, the subpoena *ad testificandum* issued to Mr. Walker has no legitimate purpose – it does nothing more than create opportunities to try to invade Google’s attorney-client privileged communications and attorney work product. Google requests that the subpoena be revoked in its entirety pursuant to 29 C.F.R. § 102.31(b).

DATED: August 17, 2021

Respectfully submitted,
PAUL HASTINGS LLP
CAMERON W. FOX
J. AL LATHAM, JR.
SARA B. KALIS
ERIC DISTELBURGER

By: _____


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sarakalis@paulhastings.com

Attorneys for Respondents
GOOGLE LLC and ALPHABET INC.

EXHIBIT A
DECLARATION OF KENT WALKER

I, Kent Walker, do hereby declare and state as follows:

1. I have personal, first-hand knowledge of the facts set forth in this declaration and, if called upon to do so, I could and would testify competently to them.
2. I make this Declaration in support of Respondents Google LLC and Alphabet Inc.'s petition to revoke Subpoena *Ad Testificandum* No. A-1-1D81Z7L.
3. I am the Chief Legal Officer and Senior Vice President of Global Affairs for Google. I have held those titles since 2018, before which I served as General Counsel.
4. I was not involved in the investigations of, or the disciplinary decisions related to, Sophie Waldman, Paul Duke, Rebecca Rivers, Laurence Berland, Kathryn Spiers, Eddie Grystar, or Kyle Dhillon. All knowledge that I have regarding those individuals, and regarding this case, comes from privileged communications and my own analysis, as part of my role as the company's legal counsel.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of August 2021 at Palo Alto, California.



Kent Walker

EXHIBIT B

Subpoena Ad Testificandum No. A-1-1D81Z7L

Kalis, Sara

From: I burgess <lburgess@burgess-laborlaw.com>
Sent: Tuesday, August 10, 2021 12:52 PM
To: Kalis, Sara
Subject: [EXT] Subpoenas
Attachments: Google witness Subpoena.pdf

Sara - per our discussion over the weekend, attached please find subpoenas for Kent Walker, Brad Fuller, Stephen King, Heather Adkins and Thomas Kurian.

Many thanks,
Laurie

Laurie M. Burgess, Attorney
(312) 320-1718 (cell)

This communication, along with any attachments and contents, is the property of attorney Laurie M. Burgess and may contain legally privileged and confidential information for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of any information contained or attached to this communication is strictly prohibited. If you have received this in error, please notify the sender immediately and destroy the original communication and its attachments without reading, printing or saving in any manner. We do not waive attorney-client or work product privilege by the transmission of this message.

SUBPOENA**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Kent Walker 201 Spear Street, San Francisco, CA 94105As requested by Laurie M. Burgesswhose address is 498 Utah Street, San Francisco CA 94110
(Street) (City) (State) (ZIP)YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
of the National Labor Relations Boardat Natalie P. Allen Memorial Courtroom, 901 Market Street, Suite 400
San Francisco, California, or method or means, including videoconference, directed by the
in the City of Administrative Law Judge.on August 23, 2021 at 9:00 AM or any adjournedGoogle, LLC and Alphabet Inc., a single employer
or rescheduled date to testify in 20-CA-252802, et al.

(Case Name and Number)

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

A-1-1D81Z7L

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at San Francisco, CADated: July 23, 2021
Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2021, I electronically filed the foregoing **RESPONDENTS GOOGLE LLC AND ALPHABET INC.'S PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-1D81Z7L** with the National Labor Relations Board using the agency's website (www.nlr.gov). I also certify that I have served said **RESPONDENTS GOOGLE LLC AND ALPHABET INC.'S PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-1D81Z7L** upon the following parties, via e-mail, pursuant to NLRB Regulation 11846.4(b):

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DATED: August 17, 2021

Respectfully submitted,
PAUL HASTINGS LLP
CAMERON W. FOX
J. AL LATHAM, JR.
SARA B. KALIS
ERIC DISTELBURGER

By: _____



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Attorneys for Respondents
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ALPHABET INC.

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

COMMUNICATIONS WORKERS OF)	CASE NOS. 20-CA-252957,
AMERICA, AFL-CIO, et al	)	20-CA-253105, 20-CA-253464
)	
Charging Party,)	
)	
vs.)	
)	
GOOGLE LLC and ALPHABET INC., a)	
single employer,	)	Hon. Judge Eleanor Laws
)	
Respondents.)	

MOTION REQUESTING ENFORCEMENT OF THE ALJ'S AUGUST 20, 2021 ORDER

Pursuant to the power and authority granted Administrative Law Judges under 29 C.F.R. 102.35 to "dispose of procedural requests, motions or similar matters," Intervenors respectfully request that the Administrative Law Judge enforce the Order entered in this matter on August 20, 2021. As noted in the NLRB Trial Benchbook Section 8-800 (citing *Station Casinos, LLC*, 28-CA-22918, unpub. Board order issued March 3, 2011 (2011 WL 828422) the ALJ has the authority to address whether a party has "contumaciously" refused to comply with portions of a subpoena not previously quashed by the Judge. Here, the Respondent has failed to produce documents subpoenaed by Intervenor for which *no* motion to quash was filed, and moreover, Respondent has failed to abide by the terms of a pre-hearing Order (**Exhibit D hereto**) entered by the Judge pertaining to Intervenor's subpoena. Intervenors respectfully request that the Administrative Law Judge require Respondents to comply with that Order, and to enter any further directive as is

deemed fit under the facts presented herein including, but not limited to those presented below:

1. On or about July 20, 2021, counsel for the General Counsel, counsel for Google (Sara Kalis) and counsel for Intervenor (Laurie Burgess) conducted a conference call to discuss discovery matters. During that call, Kalis agreed that counsel for the General Counsel could share with Burgess documents that they had received from Google in response to their subpoena. Part of the reason for this agreement was to enable Burgess to review documents prior to the Hearing in order to agree to admission of documents as joint exhibits and to agree to certain factual stipulations. In exchange, Burgess agreed to only subpoena those additional documents that she believed had not been requested by counsel for the General Counsel in their own subpoena request.

2. On July 28, 2021, responsive to the tripartite agreement, Burgess issued a limited Subpoena duces tecum to Google. A true and accurate copy of that email communication and subpoena request is attached hereto as **Exhibit A**.

3. On or about August 11, 2021, Burgess learned from counsel for General Counsel that Google would not permit General Counsel to share any of the documents they had subpoenaed with Burgess. Burgess immediately contacted Kalis regarding this situation. Kalis responded that by issuing her own subpoena duces tecum Burgess had violated the tripartite agreement and that Google would no longer honor the arrangement permitting Counsel for General Counsel to share their discovery responses with Burgess. Burgess responded by providing Kalis with

her understanding of the tripartite agreement and affirming that Burgess had not violated the terms of that agreement. On August 12, 2021, Kalis advised Burgess that she would look into the matter of the understanding that was reached and would respond promptly. When Burgess did not hear back from Kalis by August 14, 2021, she drafted and issued a second, far broader subpoena that was intended to seek documents that Burgess would have received had Google permitted Counsel for the General Counsel to share the materials with Burgess that the General Counsel had subpoenaed. A true and accurate copy of that email communication and the second subpoena duces tecum to Google is attached hereto as **Exhibit B**.

4. After receiving Burgess' second subpoena, Kalis represented that Google would not respond to any of the Intervenor's pending discovery requests until Burgess agreed to sign a Confidentiality Agreement. Burgess advised that she could not sign the agreement because it included terms that imposed wholly unreasonable and inappropriate conditions. A true and accurate copy of Kalis' email and Google's Confidentiality Agreement is attached hereto as **Exhibit C**.

5. On August 19, 2021, Burgess had still received no documents responsive to any of her discovery requests and Google persisted in disallowing Burgess to see any of the documents – including potential joint exhibits and stipulations – that Google had provided to counsel for the General Counsel. During a zoom pre-hearing conference call with the ALJ Burgess raised these concerns and an agreement was reached regarding the production of these materials.

6. By Friday, August 20, 2021 Google still had not agreed to provide documents to Burgess in the manner requested. Burgess requested that the ALJ

intervene in the matter. That day, the ALJ issued an Order regarding the production of documents to Burgess and in that Order repeated the manner in which the documents were to be produced. A true and accurate copy of that Order is attached hereto as **Exhibit D**.

7. Google ultimately produced one series of documents similar to what had been produced to Counsel for General Counsel – the documents that Burgess was expected to receive weeks earlier based upon the parties’ tripartite agreement.¹ These documents were in no way labeled or organized – instead, they were produced as a “document dump” with no accompanying written discovery response. A true and accurate copy of a screen shot of the production is attached hereto as **Exhibit E**. Google provided a response to Burgess’ July 28, 2021 discovery request on Sunday, August 22, 2021. This response included a written statement with objections and included the bates number range of the documents that were responsive, but the responsive documents were not organized in a manner that would enable the recipient to view the responsive materials in a packet, i.e., the recipient must hunt through the materials to find each document identified in the discovery response. A true and accurate copy of that production response is attached hereto as **Exhibit F**.

¹ Due to the confusion caused by whether Google would, or would not permit counsel for the General Counsel to share documents it had received from its subpoena request with Burgess, Intervenor have not received copies of critical pieces of evidence including, e.g, Google’s investigatory report pertaining to Laurence Berland. This document was provided to counsel for General Counsel, but because Google reneged on the tripartite document-sharing agreement, counsel for General Counsel advised Burgess that they cannot share this document with her. Hence, Berland’s testimony – which has now already occurred – was taken without Intervenor being afforded the opportunity to first reviewing the investigatory report.

8. Google's response to the Intervenor's July 28, 2021 discovery request is woefully incomplete. As an example, as Burgess noted repeatedly to counsel for Google, Google produced a single document in response to Request number 13, documents pertaining to its implementation of "Project Vivian" – a mechanism for thwarting activism among employees. It produced that very same solitary document in response to Request number 14, which sought documents pertaining to Google's decision to hire IRI Consultants – a union avoidance firm. Certainly numerous communications occurred prior to Google's decision to enter into a contract with IRI consultants in January, 2019 and to roll out implementation of "Project Vivian," yet the nearly completely redacted copy of that contract is the only document that Google has produced. While Google insists that any other documents are "privileged," it has not produced redacted copies of these documents or a privilege log.

9. Burgess has repeatedly requested that Google produce a privilege log and Google. See email communication attached hereto as **Exhibit G**. Google finally produced a purported privilege log on August 31, 2021. This delay is inexcusable because Google has had Burgess' subpoena request since July 28, 2021. Moreover, the privilege log does not comport with production requirements with respect to its description of the documents or the specific basis for the privilege. On the contrary, in its 128 page privilege log Google simply repeats the identical broad statement, i.e. either "Email seeking and containing legal advice of counsel regarding legal defense strategy in connection with existing and anticipated regulatory scrutiny and changes, including at the National Labor Relations Board." This is not an

appropriate privilege log. See *NLRB v. NPC International*, above, 2017 WL 634713, *9 (company's "conclusory" descriptions of the allegedly privileged emails were "wholly inadequate to enable the Court to determine whether the items were properly withheld"). Separately, we note that the privilege log extends only through August 1, 2019 – which is a time before the critical actions being litigated in this matter even occurred.

10. While simultaneously failing to provide full and complete response to Intervenor's legitimate discovery requests, Google has engaged in frivolous motion practice. It issued wholly unlawful Subpoenas to the individual discriminatees in this matter on August 18, 2021. While these requests were cast by Google's counsel as the error of a young associate, Kalis, an experienced labor lawyer, reissued the very same "erroneous" subpoenas to the discriminatees on August 19, 2021. Both counsel for intervenors and counsel for the General Counsel spent hours conducting research and drafting a petition to revoke those subpoenas until August 20, 2021, Kalis "unconditionally" withdrew the unlawful subpoenas. A true and accurate copy of one of the subpoenas (the identical subpoena was served on each discriminatee) and Kalis' unconditional withdrawal is attached hereto as **Exhibit H**.

LEGAL ARGUMENT

As the Administrative Law Judge has previously counseled the parties (Order, attached hereto as Ex. D), they are required as a minimum "consult" the Federal Rules of Evidence to reasonably comply with its rules when preparing discovery responses. Notwithstanding the ALJ's Order, as is demonstrated above,

counsel for Google has flaunted the most basic principles of discovery production.

With respect to Google's failure to provide Intervenor's (or, on information and belief, to counsel for the General Counsel) a privilege log, we note that the NLRB Trial Manual Benchbook (2021) provides at Section 8.510 that:

Consistent with FRCP 26(b)(5)(A) and 45(e)(2)(A), to the extent a party in good faith believes that certain subpoenaed documents are privileged or otherwise protected from disclosure, it must promptly submit a privilege log or index identifying those documents. *See, e.g., Nestle Dreyers Ice Cream Co.*, 31–CA–190625, unpub. Board order issued Jan. 23, 2018 (2018WL 549553), at 1 n. 2; and *Meadowlands Hospital Medical Center*, 22–CA–086823, unpub. Board order dated Oct. 20, 2015 (2015 WL 6164938), at 1 n. 2. *See also NLRB v. NPC International, Inc.*, 2017 WL 634713, *6–7 (W.D. Tenn. Feb. 16, 2017) (rejecting the company's argument that it had no obligation to produce a privilege log at the agency level); and *NLRB v. Sanders-Clark & Co.*, 2016 WL 2968014 (C.D. Cal. April 25, 2016) (finding that the respondent waived the privilege by failing to timely submit a privilege log to the ALJ). Detailed description required. The log must provide "sufficient detail to permit an assessment by the judge of the [party's] claims." *Meadowlands Hospital*. *See also* FRCP 26(b)(5)(A)(ii) and 45(e)(2)(A)(ii) (the person claiming the privilege must "describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.").

At a minimum, the log or index should include: "(1) a description of the document, including its subject matter and the purpose for which it was created; (2) the date the document was created; (3) the name and job title of the author of the document; and (4) if applicable, the name and job title of the recipient(s) of the document." *Tri-Tech Services*, 15–CA–16707, unpub. Board order issued July 17, 2003, quoted in **CNN America, Inc.*, 353 NLRB 891, 899 (2009), final decision and order issued 361 NLRB 439(2014), reconsideration denied 362 NLRB 293(2015), rev. granted in part and denied in part 865 F.3d 740 (D.C. Cir. 2017).

The particular privilege or doctrine relied on for withholding the document should also be identified. *See, e.g., GenOn Mid-Atlantic, LLC v. Stone & Webster, Inc.*, 2011 WL 221771, (S.D. N.Y. Nov. 10, 2011); and *MSTG, Inc. v. AT&T Mobility LLC*, 2011 WL 221771 (N.D. Ill. Jan. 20, 2011), reconsideration granted in part, 2011 WL 841437 (N.D. Ill. March 8, 2011) (refusing to consider whether documents were protected by the work product doctrine as the privilege log did not rely on that doctrine as the basis for withholding the documents).

Each document and attachment must be described. Unless otherwise agreed or ordered, the foregoing information should be provided for each communication or document, including attachments. *NLRB v. Interbake Foods, LLC*, 637 F.3d 492, 503 (4th Cir. 2011); and *U.S. v. White*, 950 F.2d 426, 430 (7th Cir. 1991). An attachment is not privileged simply because it is attached to a privileged communication, and it should therefore be separately identified and described in sufficient detail to evaluate the claim. *See, e.g., Lee v. Chicago Youth Centers*, 304 F.R.D. 242, 249 (N.D. Ill. 2014); and *S.E.C. v. Beacon Hill Asset Mgt. LLC*, 231 F.R.D. 134, 145 (S.D. N.Y. 2004). *See also Roberts Technology Group, Inc.*, 2015 WL 4503547 *2 (E.D. Pa. July 20, 2015) (“[T]he privilege must be asserted on a document by document basis. The communication must be confidential and with the goal of furthering counsel’s provision of legal advice. Where the attached communication is not confidential but merely contains readily available or pre-existing information not prepared by counsel, it is not privileged.”) (citations omitted).

Under the FRCP, a judge in his/her discretion may also require the party asserting the privilege to provide additional information in the form of affidavits or testimony in order to evaluate the privilege. *See, e.g., In re Grand Jury Subpoena*, 274 F.3d 563, 576 (1st Cir. 2001); *Holifield v. U.S.*, 909 F.2d 201, 204 (7th Cir. 1990); *Friends of Hope Valley v. Frederick Co.*, 268 F.R.D. 643, 651-652 (E.D. Cal. 2010); and *In re Rivastigmine Patent Litigation*, 237 F.R.D. 69, 84 (S.D.N.Y. 2006). Any significant gaps or ambiguities in the factual bases for the privilege claim are construed against the proponent. *Ibid. See also EEOC v. BDO USA, LLP*, 876 F.3d 690, 695 (5th Cir. 2017).²

Intervenors respectfully submit that counsel for Google has not been acting in good faith in responding to discovery matters and requests that the Administrative Law Judge enter an Order that the privilege has been waived. Again, as noted in the Judge’s Benchbook, “Courts consider various factors, including the scope of the subpoena, the amount of time the party had to respond to the subpoena, whether the party had been afforded one or more prior opportunities to

² The last-minute filing of this Motion (including reliance on “block quotations” of the NLRB Trial Benchbook) is a natural and foreseeable result of Google’s failure to *timely* provide responses to Intervenors’ discovery requests and continuing failure to provide an appropriate discovery log. Intervenors waited to file this Motion in the hopes that Google would voluntarily comply with its request.

properly identify and adequately describe the documents it now claims are privileged, and whether the failure to comply was flagrant, deliberate, or in bad faith. *See, e.g., EEOC v. BDO USA, LLC*, 876 F.3d at 697; *NLRB v. NPC International, Inc.*, 2017 WL 634713, *9; *In re Chevron Corp.*, 749 F.Supp.2d 141, 180–186 (S.D. N.Y.), *affd.* 409 Fed. Appx. 393 (2d Cir. 1010); *In re In-Store Advertising Securities Litigation*, 163 F.R.D. 452, 457 (S.D. N.Y. 1995), and cases cited there.”

Intervenors respectfully that the Administrative Law Judge GRANT Intervenor’s Request to enforce the Judge’s August 20, 2021 Order and provide any other relief as she deems just and equitable under the facts herein.

Respectfully submitted,

Dated: September 1, 2021


Laurie M. Burgess
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Burgess Law Offices
498 Utah St.
San Francisco, CA 94110
(312) 320-1718

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

COMMUNICATIONS WORKERS OF	)	CASE NOS. 20-CA-252957,
AMERICA, AFL-CIO, et al	)	20-CA-253105, 20-CA-253464
)	
Charging Party,)	
)	
vs.)	
)	
GOOGLE LLC and ALPHABET INC., a)	
single employer,	)	Hon. Judge Eleanor Laws
)	
Respondents.)	

Declaration of Laurie M. Burgess

I, Laurie M. Burgess, counsel of Record on behalf of Intervening Parties, do hereby affirm under penalty of perjury that the statements contained in the attached Motion Requesting Enforcement of the ALJ's August 20, 2021 Order are true and correct to the best of my knowledge.



Dated: September 1, 2021

NOTICE OF FILING AND CERTIFICATE OF SERVICE

Please take notice that this 1st day of September, 2021, the undersigned e-filed the Motion to Enforce August 20, 2021 Order with Division of Judges, Honorable Administrative Law Judge Eleanor Laws, a copy of which is hereby served upon you.

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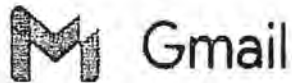
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National Labor Relations Board

EXHIBIT A



I burgess <lburgess@burgess-laborlaw.com>

Subpoena1 message

I burgess <lburgess@burgess-laborlaw.com>

Wed, Jul 28, 2021 at 3:47 PM

To: Sara <sarakalis@paulhastings.com>

Cc: "Clark, Tracy" <Tracy.Clark@nlrb.gov>, "McPalmer, Richard" <Richard.McPalmer@nlrb.gov>

Sara - responsive to our previous three-way discussion I am sending you a subpoena on behalf of the Intervenor. You may find that some of my requests significantly overlap with those tendered by the Region, but in some instances I preferred my own wording. Also, frankly, it was difficult for me to follow in each instance the email back-and-forth regarding what specifically the Region was seeking, your responses, etc.

Please feel free to contact me if you'd like to discuss any of this; I believe that the requests are quite straight-forward and largely duplicative of the Region's requests.

Many thanks,

Laurie

Laurie M. Burgess, Attorney

(312) 320-1718 (cell)

This communication, along with any attachments and contents, is the property of attorney Laurie M. Burgess and may contain legally privileged and confidential information for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of any information contained or attached to this communication is strictly prohibited. If you have received this in error, please notify the sender immediately and destroy the original communication and its attachments without reading, printing or saving in any manner. We do not waive attorney-client or work product privilege by the transmission of this message.

**2021_07_28_15_41_36.pdf**

1222K

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

To CUSTODIAN OF RECORDS
201 SPEAR STREET, SAN FRANCISCO, CA 94105

As requested by Laurie M. Burgess

whose address is 498 Utah Street, San Francisco CA 94110
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
 of the National Labor Relations Board

at Natalie P. Allen Memorial Courtroom, 901 Market Street, Suite 400
San Francisco, California, or method or means, including videoconference, directed by the
 in the City of Administrative Law Judge.

on August 23, 2021 at 9:00 AM or any adjourned

Google, LLC and Alphabet Inc., a single employer
 or rescheduled date to testify in 20-CA-252802, et al.
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1D82C6J

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at San Francisco, CA

Dated: July 23, 2021



Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

ATTACHMENT

DEFINITIONS AND INSTRUCTIONS

- 1) (a) The term "documents" means any typewritten, written, recorded or graphic materials and all electronic data of every kind in the possession, custody, or control of the recipient party of the subpoena. The term "documents" includes electronic correspondence, drafts of documents, metadata, embedded, hidden and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems, and all duplicates of documents (whether or not identical) in the files of or in the files maintained on behalf of all directors, officers, managers, or other supervisory employees, duplicates of documents in all other files that are not identical duplicates of the originals, and duplicates of documents the originals of which are not in the possession, custody, or control of the recipient party of the subpoena. The term "documents" includes spreadsheets, as well as underlying cell formulae and other codes.

(b) The term "documents" includes electronic mail messages and other documents and data stored in, or accessible through, computer or other information retrieval systems, such as personal computers, portable computers, workstations, minicomputers, personal data assistants, archival voice storage systems, group and collaborative tools, electronic messaging devices, portable or removable storage media, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of online or offline storage, whether on or off company premises. Unless otherwise specified, the term "documents" excludes bills of lading, invoices in non-electronic form, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans and engineering blueprints.
- 2) The term "Google" refers to Google, LLC (Google) and Alphabet Inc. (Alphabet), a single employer, and including its owners, officers, agents, personnel located in the United States, representatives, successors, and assigns.
- 3) The term "related to" (or any variation thereof) means refers or pertains to, reflects upon, is in any way logically or factually connected with, or may afford any information regarding the matters discussed.
- 4) The term "concerning" means referring to, alluding to, responding to, relating to, connect with, commenting on, in respect of, about, regarding, discussing, showing, describing, mentioning, reflecting, supporting, analyzing, constituting, pertaining to and/or comprising.
- 5) This subpoena request is continuing in character. If additional responsive documents come to your attention after the date of production, such documents must be promptly produced.

- 6) This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- 7) (a) Copies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available if necessary for the purposes of verifying the accuracy of such copies.

(b) Any copies of original documents which are in any way different from the original, whether by interlineation, receipt stamp, notation, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of originals satisfying the requirements of paragraph 7(a).
- 8) If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.
- 9) "Any," "each," and "all" shall be read to be all-inclusive and to require the production of each and every document responsive to the request in which such terms appear.
- 10) "And" and "or" and any other conjunctions or disjunctions used herein shall be read both conjunctively and disjunctively, so as to make the request inclusive rather than exclusive and to require the enumeration of all information responsive to all or any part of each request in which any conjunction or disjunction appears.
- 11) All documents produced pursuant to this subpoena should be organized by subpoena paragraph. Labels referring to the appropriate subpoena paragraph should be affixed to each document or set of documents.
- 12) Documents subpoenaed shall include all documents in Respondent's physical possession, custody or control, and/or in the possession of Respondent's present or former supervisors, agents, attorneys, accountants, advisors, investigators, or any other persons or companies directly or indirectly employed by or connected with Respondent.
- 13) If any document responsive to any request herein was withheld from production on the asserted ground that it is privileged, a privilege log must be produced with the following information:
 - (a) the subpoena paragraph that the document is responsive to;
 - (b) the author;
 - (c) the recipient (if any);
 - (d) the date of the original document;
 - (e) the subject matter of the document;
 - (f) the asserted ground of privilege.

- 14) If any document responsive to any request herein was, but no longer is, in Respondent's possession, custody or control:
 - (a) identify the document (stating its date, author, subject, recipients, and intended recipients);
 - (b) explain the circumstances by which the document ceased to be in Respondent's custody or control; and,
 - (c) identify (stating the person's name, employer title, business address and telephone number, and home address and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.
- 15) If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons:
 - (a) identify the document (stating its date, author, addressees, recipients, intended recipients, title, and subject matter);
 - (b) explain the circumstances surrounding the destruction, discarding, or disposal of the document, including the timing of the destruction, discarding or disposal of the document; and,
 - (c) identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.
- 16) Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. "Reasonably usable" productions of ESI consists of ESI rendered to TIFF or PDF format (discussed below), accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e. a load file suitable for loading into Concordance or a similar review platform). Unless otherwise agreed, the load file should contain: a unique identifier (i.e., Bates number) for each item, custodian, source device, source and folder path, file name, file path, production path, modified date, modified time, to, from, cc, bc, date sent, time sent, subject, date received, time received, and attachment information (i.e., attachment names and separate fields listing the beginning and ending Bates ranges of attachments). Where available, message ID and thread ID and conversation indexes should also be produced.
- 17) All images, paper documents scanned to images, or rendered ESI, shall be produced as 300 dpi single-page TIFF files, CCITT Group IV (2D Compression). Documents should be uniquely and sequentially Bates numbered with an endorsement burned into each image. All TIFF file names shall include the unique Bates number burned into the image. Each Bates number shall be a standard length, include leading zeros in the number, and be unique for each produced page.

- 18) All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed "as kept in the ordinary course of business" state (i.e. in native format). The file produced should maintain the integrity of all source, custodian, application, embedded, and related file system metadata.
- 19) All hidden text (e.g. tracked changes, hidden columns, mark-ups, notes) shall be expanded and rendered in the image file. For files that cannot be expanded, the native files shall be produced with the image file. All non-graphic embedded objects (Word documents, Excel spreadsheets, WAV files, etc.) that are found within a file shall be extracted and produced. For purposes of production, the embedded files shall be treated as attachments to the original file, with the parent/child relationship preserved.
- 20) Prior to any production of responsive data from a structured database (e.g., Oracle, SAP, SQL, MySQL, QuickBooks, etc.) or from a proprietary application (e.g., proprietary timekeeping, accounting, sales rep call notes, CRMs, SharePoint etc.), the producing party shall first provide the database dictionary and a list of all reports that can be generated from the structured database or proprietary application.
- 21) Identify, collect and produce any and all data which is responsive to this subpoena which may be stored in audio or video recordings, cell phone/PDA/Blackberry/smart phone data, tablet data, video/audio conferencing (e.g. GoTo Meeting, WebEx), and related/similar technologies. However, such data, logs, metadata, or other related files, as well as other less common but similar data types, shall be produced after consultation with and written consent of Counsel for the General Counsel about the format for the production of such data. Prior to any production of responsive data from Social Media (e.g., Twitter, Facebook, Google+, LinkedIn, etc.), the recipient party of the subpoena shall first discuss with Counsel for the General Counsel the potential export formats before collecting the information.
- 22) Deduplication of exact copies within a custodian's data may be performed, but all "filepaths" must be provided for each duplicate document. The recipient party of the subpoena shall not use any other procedure to cull, filter, group, separate, or deduplicate, etc. (i.e. reduce the volume of) responsive material before discussing with and obtaining written approval from Counsel for Intervenor.
- 23) If the recipient of the subpoena uses or intends to use software or technology to identify or eliminate potentially responsive documents and information produced in response to this subpoena, including but not limited to search terms, predictive coding, near-deduplication, deduplication, and e-mail threading, the recipient of the subpoena must provide a detailed description of the method(s) used to conduct all or any part of the search. If search terms will be used, in whole or in part, to identify documents and information that are responsive to this subpoena, provide the following:
 - (a) a list of the proposed search terms:

Subpoena Duces Tecum No. B-1-1D82C6J
Google, LLC and Alphabet Inc., a single employer
Case No. 20-CA-252802 et al.

- (b) a description of the search methodology (including the planned use of stem searches and combination (or Boolean) searches); and,
- (c) a description of the applications that will be used to execute the search.

- 24) The recipient of this subpoena can provide the documents to Counsel for Intervenors in an electronic format based upon mutual agreement with Intervenors' Counsel. Furthermore, arrangements may be made for the electronic exchange of records prior to the hearing date.
- 25) If necessary, Counsel for Intervenors will be available to meet with Respondent, or a designated legal representative of Respondent, at a mutually agreed-upon time and place before the return date of the subpoena for the purpose of examining and/or copying the subpoenaed documents and to enter stipulations concerning the contents of the subpoenaed documents.
- 26) Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

DOCUMENTS TO BE PRODUCED

1. All documents that Google contends were "confidential" or "Need to Know" documents that (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke viewed that triggered Google's investigation into each of their activities.
2. All documents relating to reflecting or concerning any change in designation or privacy settings of the documents identified in paragraph (1) above.
3. All documents relating to reflecting or concerning the decision to conduct an investigation into activities engaged in by (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke.
4. All documents relating to reflecting or concerning Google's decision to terminate the employment of (a) Sophie Waldman, (b) Rebecca Rivers and (c) Paul Duke.
5. All documents relating to reflecting or demonstrating that (a) Sophie (b) Rebecca Rivers or (c) Paul Duke shared "confidential" or "Need to Know" with non-Google employees.
6. All documents relating to reflecting or demonstrating statements by (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke seeking or attempting to limit the circulation of any "confidential" or purportedly "Need to Know" documents with non-Google employees.
7. All documents relating to Google's decision to cancel TGIF meetings in or about November, 2019.
8. All documents relating to Carter Gibson's request that Google employees cease commenting on the CBP Dory question presented by Sophie Waldman.
9. All documents relating to Google's selection of permission settings regarding the Notice of Posting related to case No. 32-CA-176462 that Google was directed to post to its employees.
10. All documents relating to or concerning the communication between Paul Duke and Amy Lambert pertaining to Duke's request for an explanation regarding what if any Google policies changed in response to the ULP (Case No. 32-CA-176462) that resulted in the Notice of Posting.
11. A copy of all memes pertaining to the Notice of Posting (Case No. 32-CA-176462) from the date that the Notice was posted through and including to December 31, 2019.
12. All documents relating to or concerning Laurence Berland's Dory question to Amy Lambert pertaining to the Notice of Posting.
13. All documents related to or concerning Google's consideration of and/or implementation of Project Vivian.
14. All documents related to Google's decision to retain IRI Consultants.
15. All documents that reflect or record Google "chats" engaged in by (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke.
16. Dory question associated with this link and any documents related to or concerning this question.

Subpoena Duces Tecum No. B-1-1D82C6J
Google, LLC and Alphabet Inc., a single employer
Case No. 20-CA-252802 et al.

17. STOP INTERNET CENSORSIHP MEME: 5194160161161216

18. Complaints, reports or other documents that triggered or influenced Google's 2019 investigations of Waldman, Rivers and Duke and any documents related to or concerning this matter.

19. All documents related to or concerning any conduct Google engaged in to monitor activities engaged in by (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke (d) Kathryn Spiers (e) Kyle Dhillon and (f) Eddie Grystar prior to Google's request to question them in or about the fall of 2019.

EXHIBIT B

From: I burgess <lburgess@burgess-laborlaw.com>
Date: Sat, Aug 14, 2021 at 5:53 PM
Subject: Re: Discovery
To: Kalis, Sara <sarakalis@paulhastings.com>

Sara - because I have not heard back from you regarding whether Google intends to honor the tripartite agreement enabling the Region to share its discovery with me I have now taken the time to write a second SDT that supplements my original one.

Please let me know if you are willing to accept service of this second SDT; if not I will gladly hand deliver it to Google's offices.

Thanks,
Laurie

On Thu, Aug 12, 2021 at 10:34 PM Kalis, Sara <sarakalis@paulhastings.com> wrote:

Laurie,

I will discuss with my client and will get back to you promptly.

Thank you,

Sara

From: I burgess <lburgess@burgess-laborlaw.com>
Sent: Thursday, August 12, 2021 3:53 PM
To: Kalis, Sara <sarakalis@paulhastings.com>
Subject: [EXT] Re: Discovery

Sara - you did not say that I couldn't serve my own SDT - you said that you didn't want to enter into this agreement and then have "hundreds" of requests from me; I chuckled and said that I would not have hundreds of requests and that I'd do everything possible to ensure that my requests were narrow and did not duplicate what the Region requested. I believe that when I sent the SDT I reiterated in that communication that it was not my intent to duplicate what you were already producing to the Region.

If you do not agree to abide by that arrangement I will need to write another SDT that is much more extensive than what I already sent and will need to at least double the number of Google witnesses that I subpoena. The point of the agreement was in part, I believe, to minimize duplication and to enhance cooperation among all parties. I believe that I have completely conformed to the terms of our agreement and hope that you reconsider your position. Please do let me know ASAP so that I can immediately turn to issuing supplemental subpoenas if we do not have an agreement.

Thanks,

Laurie

On Wed, Aug 11, 2021 at 9:54 PM Kalis, Sara <sarakalis@paulhastings.com> wrote:

Hi Laurie,

Thanks for your email. In our discussion we offered to allow you access to the documents the Region subpoenaed, including access to the documents before the hearing, in exchange for you not serving a subpoena duces tecum. However, you did, in fact, serve a subpoena. We can discuss further, but I'm not sure what was unclear about our proposal.

Thanks,

Sara

From: I burgess <lburgess@burgess-laborlaw.com>
Sent: Wednesday, August 11, 2021 2:28 PM
To: Kalis, Sara <sarakalis@paulhastings.com>
Subject: [EXT] Discovery

Sara - I received a cryptic message from the Region advising that you are not going to abide by the tripartite agreement we reached a few weeks ago regarding sharing subpoena responses. It was my understanding that Google would be producing discovery responses to the Region and me by/before the close of this week. Is that no longer the case?

Please let me know your position asap.

Thanks,

Laurie

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

To GOOGLE, LLC and Alphabet Custodian of Records
201 Spear St. San Francisco, CA. 94105

As requested by Laurie M. Burgess

whose address is 498 Utah Street, San Francisco CA 94110

(Street)

(City)

(State)

(ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge

of the National Labor Relations Board

at Natalie P. Allen Memorial Courtroom, 901 Market Street, Suite 400

San Francisco, California, or method or means, including videoconference, directed by the

in the City of Administrative Law Judge.

on August 23, 2021 at 9:00 AM or any adjourned

Google, LLC and Alphabet Inc., a single employer

or rescheduled date to testify in 20-CA-252802, et al.

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B-1-1D82FP7

Issued at San Francisco, CA

Dated: July 23, 2021



Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

ATTACHMENT

DEFINITIONS AND INSTRUCTIONS

- 1) (a) The term "documents" means any typewritten, written, recorded or graphic materials and all electronic data of every kind in the possession, custody, or control of the recipient party of the subpoena. The term "documents" includes electronic correspondence, drafts of documents, metadata, embedded, hidden and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems, and all duplicates of documents (whether or not identical) in the files of or in the files maintained on behalf of all directors, officers, managers, or other supervisory employees, duplicates of documents in all other files that are not identical duplicates of the originals, and duplicates of documents the originals of which are not in the possession, custody, or control of the recipient party of the subpoena. The term "documents" includes spreadsheets, as well as underlying cell formulae and other codes.

(b) The term "documents" includes electronic mail messages and other documents and data stored in, or accessible through, computer or other information retrieval systems, such as personal computers, portable computers, workstations, minicomputers, personal data assistants, archival voice storage systems, group and collaborative tools, electronic messaging devices, portable or removable storage media, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of online or offline storage, whether on or off company premises. Unless otherwise specified, the term "documents" excludes bills of lading, invoices in non-electronic form, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans and engineering blueprints.
- 2) The term "Google" refers to Google, LLC (Google) and Alphabet Inc. (Alphabet), a single employer, and including its owners, officers, agents, personnel located in the United States, representatives, successors, and assigns.
- 3) The term "related to" (or any variation thereof) means refers or pertains to, reflects upon, is in any way logically or factually connected with, or may afford any information regarding the matters discussed.
- 4) The term "concerning" means referring to, alluding to, responding to, relating to, connect with, commenting on, in respect of, about, regarding, discussing, showing, describing, mentioning, reflecting, supporting, analyzing, constituting, pertaining to and/or comprising.
- 5) This subpoena request is continuing in character. If additional responsive documents come to your attention after the date of production, such documents must be promptly produced.

- 6) This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- 7) (a) Copies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available if necessary for the purposes of verifying the accuracy of such copies.

(b) Any copies of original documents which are in any way different from the original, whether by interlineation, receipt stamp, notation, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of originals satisfying the requirements of paragraph 7(a).
- 8) If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.
- 9) "Any," "each," and "all" shall be read to be all-inclusive and to require the production of each and every document responsive to the request in which such terms appear.
- 10) "And" and "or" and any other conjunctions or disjunctions used herein shall be read both conjunctively and disjunctively, so as to make the request inclusive rather than exclusive and to require the enumeration of all information responsive to all or any part of each request in which any conjunction or disjunction appears.
- 11) All documents produced pursuant to this subpoena should be organized by subpoena paragraph. Labels referring to the appropriate subpoena paragraph should be affixed to each document or set of documents.
- 12) Documents subpoenaed shall include all documents in Respondent's physical possession, custody or control, and/or in the possession of Respondent's present or former supervisors, agents, attorneys, accountants, advisors, investigators, or any other persons or companies directly or indirectly employed by or connected with Respondent.
- 13) If any document responsive to any request herein was withheld from production on the asserted ground that it is privileged, a privilege log must be produced with the following information:
 - (a) the subpoena paragraph that the document is responsive to;
 - (b) the author;
 - (c) the recipient (if any);
 - (d) the date of the original document;
 - (e) the subject matter of the document;
 - (f) the asserted ground of privilege.

- 14) If any document responsive to any request herein was, but no longer is, in Respondent's possession, custody or control:
 - (a) identify the document (stating its date, author, subject, recipients, and intended recipients);
 - (b) explain the circumstances by which the document ceased to be in Respondent's custody or control; and,
 - (c) identify (stating the person's name, employer title, business address and telephone number, and home address and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.
- 15) If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons:
 - (a) identify the document (stating its date, author, addressees, recipients, intended recipients, title, and subject matter);
 - (b) explain the circumstances surrounding the destruction, discarding, or disposal of the document, including the timing of the destruction, discarding or disposal of the document; and,
 - (c) identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.
- 16) Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. "Reasonably usable" productions of ESI consists of ESI rendered to TIFF or PDF format (discussed below), accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e. a load file suitable for loading into Concordance or a similar review platform). Unless otherwise agreed, the load file should contain: a unique identifier (i.e., Bates number) for each item, custodian, source device, source and folder path, file name, file path, production path, modified date, modified time, to, from, cc, bc, date sent, time sent, subject, date received, time received, and attachment information (i.e., attachment names and separate fields listing the beginning and ending Bates ranges of attachments). Where available, message ID and thread ID and conversation indexes should also be produced.
- 17) All images, paper documents scanned to images, or rendered ESI, shall be produced as 300 dpi single-page TIFF files, CCITT Group IV (2D Compression). Documents should be uniquely and sequentially Bates numbered with an endorsement burned into each image. All TIFF file names shall include the unique Bates number burned into the image. Each Bates number shall be a standard length, include leading zeros in the number, and be unique for each produced page.

- 18) All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed "as kept in the ordinary course of business" state (i.e. in native format). The file produced should maintain the integrity of all source, custodian, application, embedded, and related file system metadata.
- 19) All hidden text (e.g. tracked changes, hidden columns, mark-ups, notes) shall be expanded and rendered in the image file. For files that cannot be expanded, the native files shall be produced with the image file. All non-graphic embedded objects (Word documents, Excel spreadsheets, WAV files, etc.) that are found within a file shall be extracted and produced. For purposes of production, the embedded files shall be treated as attachments to the original file, with the parent/child relationship preserved.
- 20) Prior to any production of responsive data from a structured database (e.g., Oracle, SAP, SQL, MySQL, QuickBooks, etc.) or from a proprietary application (e.g., proprietary timekeeping, accounting, sales rep call notes, CRMs, SharePoint etc.), the producing party shall first provide the database dictionary and a list of all reports that can be generated from the structured database or proprietary application.
- 21) Identify, collect and produce any and all data which is responsive to this subpoena which may be stored in audio or video recordings, cell phone/PDA/Blackberry/smart phone data, tablet data, video/audio conferencing (e.g. GoTo Meeting, WebEx), and related/similar technologies. However, such data, logs, metadata, or other related files, as well as other less common but similar data types, shall be produced after consultation with and written consent of Counsel for the General Counsel about the format for the production of such data. Prior to any production of responsive data from Social Media (e.g., Twitter, Facebook, Google+, LinkedIn, etc.), the recipient party of the subpoena shall first discuss with Counsel for the General Counsel the potential export formats before collecting the information.
- 22) Deduplication of exact copies within a custodian's data may be performed, but all "filepaths" must be provided for each duplicate document. The recipient party of the subpoena shall not use any other procedure to cull, filter, group, separate, or deduplicate, etc. (i.e. reduce the volume of) responsive material before discussing with and obtaining written approval from Counsel for Intervenor.
- 23) If the recipient of the subpoena uses or intends to use software or technology to identify or eliminate potentially responsive documents and information produced in response to this subpoena, including but not limited to search terms, predictive coding, near-deduplication, deduplication, and e-mail threading, the recipient of the subpoena must provide a detailed description of the method(s) used to conduct all or any part of the search. If search terms will be used, in whole or in part, to identify documents and information that are responsive to this subpoena, provide the following:
 - (a) a list of the proposed search terms;

Subpoena Duces Tecum No. B-1-1D82FP7
Google, LLC and Alphabet Inc., a single employer
Case 20-CA-252802, et al.

(b) a description of the search methodology (including the planned use of stem searches and combination (or Boolean) searches); and,

(c) a description of the applications that will be used to execute the search.

- 24) The recipient of this subpoena can provide the documents to Counsel for Intervenor in an electronic format based upon mutual agreement with Intervenor's Counsel. Furthermore, arrangements may be made for the electronic exchange of records prior to the hearing date.
- 25) If necessary, Counsel for Intervenor will be available to meet with Respondent, or a designated legal representative of Respondent, at a mutually agreed-upon time and place before the return date of the subpoena for the purpose of examining and/or copying the subpoenaed documents and to enter stipulations concerning the contents of the subpoenaed documents.
- 26) Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

DOCUMENTS TO BE PRODUCED

1. For the period January 1, 2019 through December 31, 2019, rules, policies or procedures applicable to Respondent employees and relating to the following:
 - a) The steps or processes Respondent employees must follow before releasing change lists (CLs) to Respondent's existing internal programs, applications, systems, or services.
 - b) The Readability Review process.
 - c) The "Read to Me" Program
 - d) The Looks Good to Me (LGTM) Review process.
 - e) Respondent's release tools, including RAPID.
 - f) Respondent's release scripts including, emergency, canaried, and non-canaried releases.
 - g) Change Management Security Policy.
 - h) Basic Security Policy.
 - i) Policy Notifier Policy.
 - j) Emergencies Policy.
 - k) 20% Projects.
 - l) Accessing of other employees', managers', or executives' calendars.
 - m) Limitations or restrictions on the number of invitees allowed in relation to calendared events and/or the number of rooms that may be used in relation to calendared events.
 - n) The MemeGen Takedown process.
2. For the period July 1, 2018, through December 31, 2019, rules, policies or procedures applicable to Respondent employees and pertaining to data classification, data access and/or data usage including, but not limited to, "Need-to-Know" data.
3. Emails, posts, or other messages issued to Respondent employees in which the rules, policies or procedures contemplated in Documents to be Produced subparagraphs 1 (a)-(n) and paragraph 2 were distributed or promulgated.
4. Chris Rackow's email dated November 25, 2019, containing the phrase "Securing our data" in the subject line.
5. The Critique entry for the CL(s) creating a Chrome Extension that advised employees of limitations or restrictions on the number of invitees allowed in relation to calendared events and/or the number of rooms that may be used in relation to calendared events.
6. Tool descriptions or internal webpages summarizing the use of Cider, Critique, Sigma, Moma, MemeGen, the Experimental Code Directory, the Code of Conduct alias, and go/my-concerns.
7. Records of all flags, reports or complaints relating to a meme posted to MemeGen around October or November 2019 stating, "IF you don't want your coworkers to dig out things about your earlier work and personal life and meme about how you should not be employed@ Google You should follow the Golden Rule."
8. November 4, 2019, messages posted to the Understand Your Company Google Hangout concerning memes or MemeGen, including Rivers's message stating in part, "I flagged it as harassment, and they said it didn't violate any guidelines."

9. The Need-to-Know documents Rebecca Rivers ("Rivers") accessed leading to Respondent placing Rivers on Administrative Leave in November 2019.
10. Respondent's communications with Rivers regarding her access of the documents described in paragraph 8, including the Google Hangout chat messages between Rivers and Carter Gibson dated around November 6, 2019.
11. Documents showing the calendar privacy settings available to Respondent's personnel in October and November 2019, including the personnel whose calendars Berland was placed on Administrative Leave and terminated for accessing.
12. The Critique entry related to the CL for the "NLRB Pop-Up" Kathryn Spiers ("Spiers") released on November 25, 2019.
13. A screenshot of the "NLRB Pop-Up."
14. For the period October 1, 2019 through December 31, 2019, internal reports, memoranda, emails, communications and other records discussing the then-recent conduct, discipline, or potential discipline of Kyle Dhillon ("Dhillon") and Eddie Grystar ("Grystar").
15. Notes, memoranda, reports, or other such records documenting discussions conducted during investigatory meetings occurring in November and/or December 2019 at which the following employees were questioned or interviewed: Rivers, Spiers, Dhillon, and Grystar.
16. Notes, memoranda, reports, or other such records documenting discussions with persons, including Ben Johns and Jeff Gilbert, who were questioned or interviewed in relation to the November or December 2019 conduct of any of the following employees: Rivers, Spiers, Dhillon, and Grystar.
17. Documents sufficient to show whether Kent Walker's email settings enabled "conversation view" in November and December 2019.
18. Carly Swartz's email to employees dated November 14, 2019, containing a *Google Insider* article titled, "What to Know About Need to Know."
19. Marie Collins' email to the womens-walk google group dated November 14, 2019, with the subject line, "update to two coworkers put on leave."
20. Kyle Dhillon's November 18, 2019, Memegen post stating "don't know if the doc is 'Need-to-Know?' go/always-ask-kent."
21. Kyle Dhillon's November 21, 2019, email to the transparency-and-ethics Google Group with the subject line, "go/always-ask-kent: its live."
22. For the period November 1, 2019 through December 31, 2019, emails, Google Hangouts conversations, and other communications between Spiers and the following individuals regarding or relating to the "NLRB Pop-Up":
 - a) Michael Janosko
 - b) Kyle Dhillon ("Dhillon")
 - c) Edward Grystar ("Grystar")

23. Kent Walker's May 9, 2019, email with the subject line "An important reminder on data classifications."
24. The November 8, 2019, Google plus post by Emily Randall containing the phrase, "Accessing Public Info should never be disallowed," including the portions of the post showing how many times it was commented on, liked, or linked to.
25. Kent Walker's Google Plus Post around November 2019 containing the text "Wanted to clarify a few things on the Need to Know policy and our Community Guidelines."
26. The calendar entry regarding an event that had been scheduled to occur in October 2019 in Respondent's Zurich office regarding unionization, including records of all invitees and rooms reserved for the event or for viewings of the event within the United States.
27. For the period July 1, 2018, through March 1, 2020, records documenting disciplinary actions (including, but not limited to, coachings, counselings, warnings, suspensions, placements on leave, placements on monitoring of code reviews, terminations of cell service, and terminations) issued to Respondent employees for breach of data classification, data access and/or data usage policies including, but not limited to, access or use of data classified as "Need-to-Know."
28. For the period January 1, 2019 through December 31, 2019, records documenting disciplinary actions (including, but not limited to, coachings, counselings, warnings, suspensions, placements on leave, placements on monitoring of code reviews, terminations of cell service, and terminations) issued to Respondent employees for accessing others' calendars and/or for breach of calendar access policies.
29. Documents showing privacy settings available for the documents that Rivers, Duke, and Waldman accessed at the time they were accessed that led Respondent to place Rivers, Duke and Waldman on Administrative Leave in November 2019.
30. Respondent's complete personnel files (i.e. records of each employee's hire, performance, disciplinary and other work-related forms kept in the regular course of business, minus HIPAA-protected materials) for the following Respondent employees Rivers, Duke, and Waldman.
31. Notes, memoranda, reports, or other such records documenting discussions conducted during the investigatory meetings occurring in 2019 at which the following employees were questioned or interviewed: Rivers, Duke, Waldman, Dhillon, Grystar.
32. Respondent-issued invitations to Respondent's employees to attend a meeting regarding a budgetary document that had been circulated amongst Respondent's employees in or around the first quarter of 2019.
33. Records documenting disciplinary actions (including, but not limited to, coachings, counselings, warnings, suspensions, placements on leave, and terminations) issued to Respondent's employees for searching for, distributing, or circulating the budgetary document that was circulated amongst Respondent's employees in or around the first quarter of 2019.

34. Respondent statements or announcements issued to Respondent's employees regarding the creation or implementation of Artificial Intelligence Principles around March 2019.
35. For the period August 2018 through December 2019, Respondent's Artificial Intelligence Principles. Respondent statements or announcements issued to Respondent's employees concerning:
 - (a) Respondent's appointment of Kay Coles James to an Artificial Intelligence council in or around March or April 2019.
 - (b) Respondent employee concerns regarding YouTube's alleged failure to enforce its harassment policies and/or Respondent's participation in the 2019 San Francisco Gay Pride Parade.
 - (c) Respondent's work or potential work with the U.S. Customs and Border Protection(CBP) and related agencies.
36. Comments by Carter Gibson, made in or around July or August 2019 via email, Dory, or any other communication medium internal to Respondent, requesting that employees cease engagement on a comment posted to Dory asking whether Respondent would be willing to commit to not work for U.S. Customs and Border Protection (CBP).
37. Respondent's current version of its Basic Security Policy.
38. Respondent's rules, policies, mission statements, codes of conduct, and other such documents in effect in 2019 instructing "don't be evil."
39. Emails exchanged between Waldman and Brad Fuller and/or Aleks Kagramanov following the September 5, 2019 interview of Waldman conducted by Fuller and Kagramanov.
40. Emails exchanged between Duke and Brad Fuller following the September 5, 2019 interview of Duke conducted by Fuller.
41. Emails exchanges between Duke and Legal Department Vice President Amy Lambert regarding or relating to an NLRB Notice to Employees electronically posted by Respondent sometime in 2019.
42. A letter signed by Duke directed to Respondent's employees regarding or relating to proposals to be introduced and voted on at an Alphabet shareholder meeting in or around June 2019.
43. Employee-signed or -adopted petitions regarding or relating to Respondent's work or potential work with the U.S. Customs and Border Protection (CBP)and related agencies.

44. An email issued in around June or July 2019 from Sundar Pichai to Respondent's employees (or possibly to a subgroup of Respondent's employees associated with a "Gayglers" group) regarding concerns raised by Respondent's employees about YouTube's decision not to remove content posted by Steven Crowder.
45. For the period July 2019 through December 2019, Respondent employee-generated Q&As, informational updates, or other such documents addressed to circulating information relating to Respondent's work or potential work with the U.S. Customs and Border Protection (CBP) and related agencies.
46. Respondent's Community Moderation Guidelines applicable to Respondent's employees in the period January 2019 through December 2019, and any emails issued to Respondent's employees in or around August 2019 announcing and/or providing an electronic link to any such Guidelines.
47. The Notice to Employees the Employer posted pursuant to the settlement in NLRB Case 32-CA-176462.
48. The following internal webpages:
 - a) go/admin-leave-update-2
 - b) go/community-post
 - c) go/always-ask-kent
 - d) go/need-to-know-dd
 - e) go/tribecca-response
 - f) go/admin-leave-update
 - g) go/open-culture-town-hall
 - h) go/open-culture-town-hall-live
 - i) go/ntk-unified-ticketing system
 - j) go/nlrnotice
 - k) go/send-love-to-krk
 - l) go/nd-gcp-for-cbp
 - m) go/legends
 - n) <https://g3doc.corp.google.com/devtools/cider/g3doc/index.md?cl=head>
 - o) [https://g3doc.corp.google.com/java/com/google/borg/sigma/g3doc/index.md?cl=h ead](https://g3doc.corp.google.com/java/com/google/borg/sigma/g3doc/index.md?cl=head)
 - p) https://memegen.corp.google.com/search/memes?q=creation_time%3D2019-11-01&days=KANYE
49. An email sent to Respondent's employees around May 7, 2018 with the subject line, "Has anyone seen Sergey?"
50. The internal webpage titled "Internal Resources with No Work Purpose," located at go/amusements, and all the subpages included therein.
51. The Critique entries for the following:
 - (a) All released CLs that created images of cats, corgis, or other animals walking across Respondent's Cider tool, including all released CLs that created these images automatically whenever the Cider tool was opened.
 - (b) The unreleased CL that would have changed Respondent's "Still working..." message on Gmail to "Fuck you."
 - (c) The CL, dated around 2015, that displayed a message on MemeGen reading in part, "Freedom of Speech on Blogger."

- (d) The CL that created a pop-up in the Employer's Sigma Tool that stated in part, "Sigma loves Krakow. Did you know it was built there?"
 - (e) The CL, released around November 1, 2018, that changed the desktop background on several employee computers to an image in support of the "Women's Walkout."
 - (f) The CL creating "gCoins."
 - (g) The CL creating the "Hot Potato" game.
52. For the CLs described in Documents to be Produced paragraph 51 that were released and are still active, screenshots showing the features created by the CLs.
53. Documents sufficient to show whether the following codes were released:
- (a) The code that would have changed Respondent's "Still working..." message on Gmail to "Fuck you."
 - (b) The code, dated around 2015, that displayed a message on MemeGen reading in part, "Freedom of Speech on Blogger."
 - (c) The code that created a pop-up in the Employer's Sigma Tool that stated in part, "Sigma loves Krakow. Did you know it was built there?"
54. Records documenting disciplinary actions (including, but not limited to, coachings, counselings, warnings, suspensions, placements on leave, placements on monitoring of code reviews, terminations of cell service, and terminations) for employees involved in the creation of the items described in Documents to be Produced paragraphs 49, 50, 51, and 53.
55. All emails sent to Kent Walker cc'ing needtoknow-unified-ticketing-system@google.com with the subject line:
- a) "Requesting permission to access document or calendar."
 - b) "Requesting permission to access document or calendar (go/always-ask-kent)."
56. Records documenting rewards, commendations, or similar recognitions issued by Respondent to Respondent's employees, including but not limited to, peer bonuses, for their involvement in the creation of the items described in Documents to be Produced paragraphs 49, 50, 51 and 53, and a list of the names and job titles of all persons involved in the approval of the official rewards, commendations, or similar recognitions.
57. For the period January 1, 2019 through December 31, 2019, Records documenting disciplinary actions (including, but not limited to, coachings, counselings, warnings, suspensions, placements on leave, placements on monitoring of code reviews, terminations of cell service, and terminations) issued to Respondent employees in relation to any of the following:
- (a) Releasing CLs without proper authorization.
 - (b) Conducting a Readability or Looks Good to Me (LGTM) Review.
 - (c) Breach of Respondent's Basic Security Policy, Change Management Security Policy, Policy Notifier policy, or Emergencies policy.

EXHIBIT C

Google - Subpoena discussion

External
Inbox

Kalis, Sara Mon, Aug 16, 4:31 PM

to me, Cameron

Laurie,

Thanks for the time yesterday. Following our conversation I wanted to summarize our discussion and provide the promised document. I was hoping to have final sign-off on this document today, which was the reason I held off on sending it sooner. Unfortunately I don't have final approval yet, so I am sending this subject to final approval from Google. As discussed, below is the agreement we reached:

- 1) We can disregard the subpoena you sent over the weekend, asking whether we would accept service on behalf of Google.
- 2) Google will provide you the documents it provided to the Region in response to the Region's subpoenas. I can send these to you once we have agreement on a Confidentiality Agreement. The documents provided to the Region are already prepped and ready to send once the document is executed.
- 3) We agreed that you will keep everything that is produced to you confidential. However, when it comes to exhibits at trial, Google will provide you a written list of the documents it believes should maintain the confidentiality designation in advance of the hearing. Any disputes we have on the confidentiality designation for trial exhibits will be decided by the ALJ. You agreed, conceptually, that customer lists are one example of documents that should maintain a confidentiality designation for the hearing.

[REDACTED] (redacted) Please let me know if you have any questions about the above.

Thanks,

Sara

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

GOOGLE, LLC and ALPHABET INC., a single employer,

Respondents,

and

EDWARD GRYSTAR, an Individual,

Case Nos.: 20-CA-252802

Charging Party,

and

KYLE DHILLON, an Individual,

20-CA-252902

Charging Party,

and

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

20-CA-252957

20-CA-253105

Charging Party,

20-CA-253464

and

AMR GABER, an Individual,

20-CA-253982

Charging Party.

CONFIDENTIALITY AGREEMENT

The parties agree that the preparation and hearing of this matter will result in the exchange of documents, testimony, information, and other materials claimed by one or more of the parties to this matter to contain confidential, competitively-sensitive, and/or private information protected from disclosure under applicable law ("Confidential Information"). As

such, the parties jointly agree to the following procedures and rules governing the production, use, and return of documents, testimony, information, and other materials. With respect to such Confidential Information, the parties agree as follows:

1. Definitions:

a. The term “Copy” as used herein means any digital, photographic, mechanical or computerized copy or reproduction of any document or thing, or any verbatim transcript, audio or videotape, in whole or in part, of such document, testimony, or thing.

b. The term “Document” as used herein shall be given its broadest possible meaning under the Federal Rules of Civil Procedure and includes any document, information, material, or oral testimony that is filed, submitted, produced, elicited, or exchanged by or among the parties in this matter, in any manner or format, including but not limited to electronically stored data, any deposition transcript, and any discovery responses.

c. The term “party” or “parties” shall include Alleged Discriminatees Kathryn Spiers, Kyle Dhillon, Edward Grystar, Rebecca Rivers, Sophie Waldman, and Paul Duke, along with Google LLC and Alphabet Inc.

2. Procedure for Marking of Confidential Documents. A party may designate as “CONFIDENTIAL BUSINESS INFORMATION” any Document, or any portion of a Document, that such party believes in good faith to contain Confidential Information (a “Confidential Document”). All Documents or portions of Documents that have been designated as “CONFIDENTIAL BUSINESS INFORMATION” under this Confidentiality Agreement shall be given confidential treatment and protected pursuant to the terms of this Confidentiality Agreement. A party may designate Documents or portions of Documents as “CONFIDENTIAL

BUSINESS INFORMATION” as follows: The designating party shall note “CONFIDENTIAL BUSINESS INFORMATION” on each page of the Document that contains Confidential Information. After any such designation, the portion of the Document designated as Confidential shall be fully subject to this Confidentiality Agreement and treated thereafter according to the terms of this Confidentiality Agreement as Confidential Documents.

3. Inadvertent Non-Designation. Inadvertent failure to designate Documents as “CONFIDENTIAL BUSINESS INFORMATION” at the time of production shall not be deemed a waiver of a party’s right to so designate the Documents and may be remedied by supplemental written notice after such failure to designate is known. If such notice is given, all Documents so designated shall be fully subject to this Confidentiality Agreement as if it had been initially designated consistent with the notice provided. The inadvertent disclosure by a party of Confidential Documents during the course of this matter, regardless of whether the Document was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party’s claim of confidentiality, either as to the specific Document disclosed or as to any other Document relating thereto or on the same or related subject matter. Counsel for the parties shall, in any event, upon discovery of the inadvertent disclosure cooperate to restore the confidentiality of the Confidential Information that was disclosed.

4. Right to Challenge Designation. To the extent that any party seeks to limit or prevent use of any Document designated under this Agreement at the hearing, the other party shall have the right to challenge that designation by motion to the Administrative Law Judge. The designating party shall bear the burden of proving that the Document warrants the protection asserted. The Administrative Law Judge shall rule on a challenge to the designation of a Document as Confidential within 5 business days after the Administrative Law Judge is notified

of the challenge.

Separate and apart from use of the Documents at the hearing, the designation of any Document may be challenged by any other party by first writing a letter to the attorney of record of the party who designated such Document, specifically identifying the Document so challenged. The parties shall then attempt in good faith to resolve any disputes regarding the designated Document. If the parties are unable to resolve their dispute, following a good faith effort to do so, the challenging party may then make a motion to the Administrative Law Judge for an order vacating the designation. While such an application is pending, the Document in question shall be treated consistent with its designation, until a final determination is made.

Nothing herein restricts the right of a party to challenge a designation of Documents on the grounds that they are publicly-available Documents; Documents that on their face show that they have been submitted to any public or governmental entity without a request for confidential treatment; or Documents already available to the public.

5. Permissible Disclosures of Confidential Documents. Confidential Documents, any Copies thereof, and the information contained therein shall not be used, shown, disseminated, or in any way communicated to anyone for any purpose outside of this matter and may only be used for purposes of this matter.

6. Summaries. Any summaries of Confidential Documents shall be accorded the same status of confidentiality and protection as the underlying Documents from which the summaries are made, and shall be subject to all of the terms of this Confidentiality Agreement.

7. Expressly Prohibited Uses. The receiving party, its attorneys, and anyone else to whom disclosure of Confidential Documents is permitted according to the terms of this Confidentiality Agreement shall not under any circumstances sell, offer for sale, advertise, or

publicize the contents of such Documents that are received from the other party.

8. Use of Documents. Nothing contained in this Confidentiality Agreement shall be construed to limit either party's use of any Document within and for purposes of the matter.

9. Right to Challenge Use of Documents. Nothing contained in this Confidentiality Agreement shall waive either party's right to seek to prohibit the use by the other party of Documents for a purpose that is in violation of this Confidentiality Agreement. Upon filing of any such motion, the non-moving party shall not use the subject Documents in the contested manner until the motion is decided or the matter is resolved by mutual agreement of the parties.

10. Continuation / Non-termination of Confidentiality Agreement. After the conclusion of this matter, the provisions of this Confidentiality Agreement shall continue to be binding, except with respect to any Documents that has become a matter of public record. The Administrative Law Judge shall retain jurisdiction over the parties and recipients of the Confidential Documents for enforcement of the provisions of this Confidentiality Agreement following conclusion of this matter.

11. Damages. The Parties agree that money damages would not be a sufficient remedy for any breach of their obligations under this Confidentiality Agreement and that the non-breaching party shall be entitled to specific performance as a remedy of any breach. The parties also agree that any breach of their obligations under this Confidentiality Agreement will cause the non-breaching party irreparable harm for which there is not an adequate remedy at law, entitling that party to an award of immediate temporary and permanent injunctive relief.

12. Subpoena by Other Courts or Agencies. If a Court or governmental agency subpoenas or orders production of Confidential Documents that a Party has obtained under the

terms of this Confidentiality Agreement, such party shall notify the party who produced such Documents within four business days of receipt of the subpoena or order. The party who produced the Confidential Documents shall be responsible for seeking whatever appropriate protective orders or other relief it desires before such time that the party receiving the subpoena or other order must comply with such subpoena or other order.

13. Return of Documents. Within thirty (30) days after the later of (i) entry of a final decision in, or settlement of, this matter and (ii) after the time for any and all appeals has expired, the receiving party and its attorneys shall destroy or return to the producing party or its attorneys all Confidential Documents, Copies, summaries, and analyses (other than exhibits of record) in the possession of the receiving party. The receiving party's attorneys may retain one archival copy of (1) all exhibits used in the matter; (2) all documents included in submissions to Region 20 of the National Labor Relations Board and the Administrative Law Judge; and (3) summaries and analyses that counsel in good faith believes must be retained as a matter of professional responsibility.

14. Binding. This Confidentiality Agreement shall be binding upon the Parties and their attorneys, successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

15. Modification. Neither this Confidentiality Agreement, nor any provision of it, may be changed or amended orally, but only by an agreement in writing signed by the parties. This Confidentiality Agreement may be modified or amended either by agreement of the Parties or by order of the Administrative Law Judge upon good cause shown. Additional protective orders may be entered by written agreement of the parties.

16. No Waiver. Entering into this Confidentiality Agreement, and/or agreeing to, producing and/or receiving Confidential Documents, or otherwise complying with the terms of this Confidentiality Agreement, shall not:

- a. constitute an admission that any Document contains or reflects trade secrets, any other type of confidential or proprietary information;
- b. prejudice in any way the rights of any party to object to the production of documents it considers not subject to disclosure;
- c. prevent the parties subject to this Confidentiality Agreement from agreeing to alter or waive the provisions or protections provided herein with respect to any particular Confidential Document;
- d. prejudice in any way the rights of any party to object to the authenticity or admissibility into evidence of any document, testimony, videotape or other evidence subject to this Confidentiality Agreement;
- e. prejudice in any way the rights of a party to seek further protection or a determination by the Administrative Law Judge as to whether any Document designated as "Confidential" should be subject to the terms of this Confidentiality Agreement; or
- f. be deemed to restrict any party or its respective counsel with respect to that party's own Documents.

21. Privileged Documents. The production or disclosure of any Documents or other material protected by the attorneyclient privilege, the attorney work product doctrine, or any other applicable privilege, shall not constitute, or be considered as a factor suggesting, a waiver of or estoppel as to any claim of privilege, protection or immunity, in whole or in part, as to the

specific Documents or other material disclosed or any other material relating thereto or on the same or related subject matter. In the event of production or disclosure of any Documents or other material that the producing party believes is subject to a claim of privilege or protection, the producing party may provide written notice that a privileged or protected Document or other material has been produced or disclosed. Within five (5) business days of receipt of such notice, any individual or entity that has received such privileged Documents or other material shall destroy or return to the producing party all such privileged or protected Documents or other material and all copies thereof, including any other Documents or other material solely derived from the produced or disclosed Documents or other material, in its possession, custody or control and shall certify in writing that it has done so. After the produced Document or other material is destroyed or returned pursuant to this paragraph, a party may seek an order compelling production of the produced Documents or other material, but said party may not assert as a ground for compelling production the fact or circumstance that the produced Documents or other material had already been produced.

AGREED AS TO FORM AND SUBSTANCE:

Laurie Burgess
ATTORNEY FOR ALLEGED DISCRIMINATEES

Sara Kalis
ATTORNEY FOR RESPONDENTS

EXHIBIT D

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

GOOGLE, LLC and ALPHABET INC., a single employer

and

EDWARD GRYSTAR, an Individual

and

KYLE DHILLON, an Individual

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

KATHRYN SPIERS, Intervenor

and

SOPHIE WALDMAN, Intervenor

and

PAUL DUKE, Intervenor

and

REBECCA RIVERS, Intervenor

Cases 20-CA-252802
20-CA-252902
20-CA-252957
20-CA-253105
20-CA-253464

ORDER RE: PRODUCTION OF SUBPOENAED DOCUMENTS

On August 19, 2021, the parties participated in a Zoom videoconference with the undersigned to address any outstanding matters regarding documents counsel for the alleged discriminatees in this matter had subpoenaed from the Respondent. The matter was resolved, with the only outstanding issue remaining whether the Respondent would be able to produce the documents in a manner that would match the documents to the request by the end of the week. In other words, the timing of the Respondent's ability to match up the documents was the only

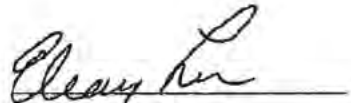
outstanding matter. I have since been informed that the dispute may or may not be broader than one of timing.

Although not binding on the Agency, the Federal Rules of Civil Procedure also provide “useful guidance” and “should be consulted.” *Brink’s, Inc.*, 281 NLRB 468 (1986). FRCP 34(E)(i) states that the party producing the documents “must organize and label them to correspond to the categories in the request.” See also *San Luis Trucking*, 352 NLRB 211, 212 (2008), *reaffd.* 356 NLRB 168 (2010) (imposing evidentiary sanctions where respondent made 2471 boxes of documents “available” to the General Counsel the afternoon before the hearing, without producing the requested documents in the form required by FRCP 34 and 45 at the hearing, despite the judge’s denial of respondent’s petition to revoke at the outset thereof), *enfd.* without addressing the sanctions issue 479 Fed. Appx. 743 (9th Cir. 2012).

At the time this order was served, it appears the parties were working to resolve any outstanding matters. In any event, should a dispute arise, the above rules and caselaw apply.

SO ORDERED

Dated: August 20, 2021


Eleanor Laws
Administrative Law Judge

Served by email:

For the NLRB

Tracy Clark, Esq.
tracy.clark@nlrb.gov

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pats@cwa-union.org

EXHIBIT E

Name	Date Modified	Size	Kind
▼ IMAGES	Aug 22, 2021 at 8:37 PM	--	Folder
▼ IMAGES001	Aug 22, 2021 at 8:37 PM	--	Folder
▼ 001	Aug 22, 2021 at 10:30 AM	--	Folder
GOOG-252957-00002486.pdf	Aug 22, 2021 at 10:30 AM	20 KB	Adobe...cument
GOOG-252957-00002487.pdf	Aug 22, 2021 at 10:30 AM	74 KB	Adobe...cument
GOOG-252957-00002489.pdf	Aug 22, 2021 at 10:30 AM	26 KB	Adobe...cument
GOOG-252957-00002490.pdf	Aug 22, 2021 at 10:30 AM	59 KB	Adobe...cument
GOOG-252957-00002492.pdf	Aug 22, 2021 at 10:30 AM	54 KB	Adobe...cument
GOOG-252957-00002494.pdf	Aug 22, 2021 at 10:30 AM	405 KB	Adobe...cument
GOOG-252957-00002506.pdf	Aug 22, 2021 at 10:30 AM	36 KB	Adobe...cument
GOOG-252957-00002607.pdf	Aug 22, 2021 at 10:30 AM	177 KB	Adobe...cument
GOOG-252957-00002513.pdf	Aug 22, 2021 at 10:30 AM	144 KB	Adobe...cument
GOOG-252957-00002518.pdf	Aug 22, 2021 at 10:30 AM	31 KB	Adobe...cument
GOOG-252957-00002519.pdf	Aug 22, 2021 at 10:30 AM	107 KB	Adobe...cument
GOOG-252957-00002522.pdf	Aug 22, 2021 at 10:30 AM	112 KB	Adobe...cument
GOOG-252957-00002526.pdf	Aug 22, 2021 at 10:30 AM	205 KB	Adobe...cument
GOOG-252957-00002532.pdf	Aug 22, 2021 at 10:30 AM	31 KB	Adobe...cument
GOOG-252957-00002533.pdf	Aug 22, 2021 at 10:30 AM	159 KB	Adobe...cument
GOOG-252957-00002537.pdf	Aug 22, 2021 at 10:30 AM	27 KB	Adobe...cument
GOOG-252957-00002538.pdf	Aug 22, 2021 at 10:30 AM	78 KB	Adobe...cument
GOOG-252957-00002540.pdf	Aug 22, 2021 at 10:30 AM	39 KB	Adobe...cument
GOOG-252957-00002543.pdf	Aug 22, 2021 at 10:30 AM	347 KB	Adobe...cument
GOOG-252957-00002554.pdf	Aug 22, 2021 at 10:30 AM	108 KB	Adobe...cument
GOOG-252957-00002557.pdf	Aug 22, 2021 at 10:30 AM	16 KB	Adobe...cument
GOOG-252957-00002558.pdf	Aug 22, 2021 at 10:30 AM	231 KB	Adobe...cument
GOOG-252957-00002565.pdf	Aug 22, 2021 at 10:30 AM	175 KB	Adobe...cument
GOOG-252957-00002570.pdf	Aug 22, 2021 at 10:30 AM	175 KB	Adobe...cument
GOOG-252957-00002575.pdf	Aug 22, 2021 at 10:30 AM	175 KB	Adobe...cument
GOOG-252957-00002580.pdf	Aug 22, 2021 at 10:30 AM	26 KB	Adobe...cument
GOOG-252957-00002581.pdf	Aug 22, 2021 at 10:30 AM	360 KB	Adobe...cument
GOOG-252957-00002592.pdf	Aug 22, 2021 at 10:30 AM	360 KB	Adobe...cument
GOOG-252957-00002603.pdf	Aug 22, 2021 at 10:30 AM	58 KB	Adobe...cument
GOOG-252957-00002605.pdf	Aug 22, 2021 at 10:30 AM	87 KB	Adobe...cument
GOOG-252957-00002608.pdf	Aug 22, 2021 at 10:30 AM	126 KB	Adobe...cument
GOOG-252957-00002611.pdf	Aug 22, 2021 at 10:30 AM	303 KB	Adobe...cument
GOOG-252957-00002621.pdf	Aug 22, 2021 at 10:30 AM	433 KB	Adobe...cument
GOOG-252957-00002635.pdf	Aug 22, 2021 at 10:30 AM	354 KB	Adobe...cument
GOOG-252957-00002647.pdf	Aug 22, 2021 at 10:30 AM	354 KB	Adobe...cument

EXHIBIT F

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party,

vs.

GOOGLE, LLC and ALPHABET INC., a single
employer,

Respondents.

**CASE NO. 20-CA-252957, 20-CA-
253105, 20-CA-253464**

**RESPONDENTS GOOGLE, LLC AND
ALPHABET INC.'S OBJECTIONS
AND RESPONSES TO SUBPOENA
DUCES TECUM**

TO THE COUNSEL FOR THE GENERAL COUNSEL:

Respondents Google LLC and Alphabet Inc. (collectively "Respondents") hereby submit their objections and responses to the First Subpoena Duces Tecum (the "Subpoena") served by Counsel for the Alleged Discriminatees, as follows:

GENERAL OBJECTIONS

1. Respondents object to each Request to the extent that it seeks information and/or documents that are protected by the attorney-client privilege, the work product doctrine, the right to privacy, the privilege against disclosure protecting confidential information, proprietary business material, trade secrets, self-evaluative privilege, or any other applicable privilege.

2. Respondents object to the Subpoena's definition of Respondents as a "single employer." Respondents further object to the Subpoena's definition of Respondents, and to each and every Request that incorporates this definition, on the grounds that it is vague, ambiguous, overly broad and unintelligible to the extent it purports to encompass Respondents, as well as third parties or other persons somehow acting on their behalf at any time, past or present.

Respondents understand and will interpret the term Respondents as seeking documents from Google LLC and Alphabet Inc., alone.

3. Respondents' responses to Requests are made without waiver of, and with preservation of: (1) all questions as to competency, relevance, materiality, privilege, and admissibility of any material contained or referred to in each response for any purpose in this or in any other proceeding; (2) the right to object to the use of any material contained or referred to in each response for any purpose in this or in any other proceeding; (3) the right to object on any grounds at any time to a demand or Request for further response relating to the subject matter of the Requests responded to herein; (4) the right to revise, to correct, to add to, or to clarify if necessary any of the responses or objections contained herein; (5) the right at any time to recall any inadvertent responses to which any privilege or immunity is attached; and (6) the right to introduce at hearing any evidence of which Respondents becomes aware as a result of its continuing investigation or discovery.

4. No response to any Request shall be deemed a waiver of any objection not set forth herein that could be made to any such Request concerning the relevance of any information or document or the information set forth on any document and/or any other matter affecting the potential admissibility of any such information or documents at hearing.

The General Objections are fully incorporated into each individual response set forth below, and each individual response is made subject to and without waiver of the General Objections.

INDIVIDUAL OBJECTIONS AND RESPONSES

DOCUMENT REQUEST NO. 1:

All documents that Google contends were “confidential” or “Need to Know” documents that (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke viewed that triggered Google’s investigation into each of their activities.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 1:

Respondents object to this Request on the grounds that it is vague and ambiguous as to “each of their activities.” Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll documents.” Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, see documents produced by Respondents, including GOOG-252957-00001011-106; GOOG-252957-00000122-23; GOOG-252957-00000124-25; GOOG-252957-00000888-95; GOOG-252957-00000762-64; GOOG-252957-00000228-33; GOOG-252957-00000001-53; GOOG-252957-00000054-121; GOOG-252957-00000882-87; GOOG-252957-00000126-30; GOOG-252957-00000765-66.

DOCUMENT REQUEST NO. 2:

All documents relating to reflecting or concerning any change in designation or privacy settings of the documents identified in paragraph (1) above.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 2:

Respondents object to this Request on the grounds that it is vague and ambiguous as to “privacy settings.” Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll documents.” Respondents further

object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents will produce the documents identifying privacy settings available it has identified as being the closest match to the description in this request, including GOOG-252957-00002319 - GOOG-252957-00002320; GOOG-252957-00002321 - GOOG-252957-00002322; GOOG-252957-00002323 - GOOG-252957-00002324; GOOG-252957-00002325 - GOOG-252957-00002327; GOOG-252957-00002328 - GOOG-252957-00002329; GOOG-252957-00002330 - GOOG-252957-00002330.

DOCUMENT REQUEST NO. 3:

All documents relating to reflecting or concerning the decision to conduct an investigation into activities engaged in by (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 3:

Respondents object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll documents.” Respondents further object to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, *see* Response to Document Request No. 1.

DOCUMENT REQUEST NO. 4:

All documents relating to reflecting or concerning Google’s decision to terminate the employment of (a) Sophie Waldman, (b) Rebecca Rivers and (c) Paul Duke.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 4:

Respondents object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll documents.” Respondents further object to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, *see* Response to Document Request No. 1.

DOCUMENT REQUEST NO. 5:

All documents relating to reflecting or demonstrating that (a) Sophie [sic] (b) Rebecca Rivers or (c) Paul Duke shared “confidential” or “Need to Know” with non-Google employees.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 5:

Respondents object to this Request on the grounds that it is vague and ambiguous as to “Sophie.” Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll documents.” Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondent is not aware of any responsive documents.

DOCUMENT REQUEST NO. 6:

All documents relating to reflecting or demonstrating statements by (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke seeking or attempting to limit the circulation of

any "confidential" or purportedly "'Need to Know" documents with non-Google employees.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 6:

Respondents object to this Request on the grounds that it is vague and ambiguous as to "relating to reflecting or demonstrating." Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks "[a]ll documents." Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents will produce the documents it has identified as being the closest match to the description in this request, including GOOG-252957-00002371 - GOOG-252957-00002371.

DOCUMENT REQUEST NO. 7:

All documents relating to Google's decision to cancel TGIF meetings in or about November, 2019.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 7:

Respondents object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks "[a]ll documents." Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents will produce the documents it has identified as being the closest match to the description in this request, including GOOG-252957-00002444 - GOOG-252957-00002445.

DOCUMENT REQUEST NO. 8:

All documents relating to Carter Gibson's request that Google employees cease commenting on the CBP Dory question presented by Sophie Waldman.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 8:

Respondents object to this Request on the grounds that it is vague and ambiguous as to "request that Google employees cease commenting" and "the CBP Dory question presented." Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks "[a]ll documents." Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information. Respondents further object to this Request to the extent that it seeks information pertaining to individuals, the disclosure of which would constitute an unwarranted invasion of the affected individuals' constitutional, statutory and/or common law rights to personal privacy and confidentiality.

Subject to the foregoing objections, Respondents will produce the documents it has identified as being the closest match to the description in this request, including GOOG-252957-00001263 - GOOG-252957-00001274; GOOG-252957-00001275 - GOOG-252957-00001287.

DOCUMENT REQUEST NO. 9:

All documents relating to Google's selection of permission settings regarding the Notice of Posting related to case No. 32-CA-176462 that Google was directed to post to its employees.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 9:

Respondents object to this Request on the grounds that it is vague and ambiguous as to "selection of permission settings." Respondents further object to this Request on the grounds that

it is overbroad in scope and unduly burdensome to the extent that it seeks “[a]ll documents.”

Respondents further object to this Request insofar as it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents will produce the documents it has identified as being the closest match to the description in this request, including:

GOOG-252957-00002372	- GOOG-252957-00002372	GOOG-252957-00002430	- GOOG-252957-00002433
GOOG-252957-00002373	- GOOG-252957-00002373	GOOG-252957-00002434	- GOOG-252957-00002435
GOOG-252957-00002374	- GOOG-252957-00002374	GOOG-252957-00002436	- GOOG-252957-00002439
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GOOG-252957-00002425	- GOOG-252957-00002428	GOOG-252957-00005677	- GOOG-252957-00005680
GOOG-252957-00002429	- GOOG-252957-00002429		

DOCUMENT REQUEST NO. 10:

All documents relating to or concerning the communication between Paul Duke and Amy Lambert pertaining to Duke's request for an explanation regarding what if any Google policies changed in response to the ULP (Case No. 32-CA-176462) that resulted in the Notice of Posting.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 10:

Respondents object to this Request on the grounds that it is vague and ambiguous as to “pertaining to Duke’s request for an explanation regarding what if any Google policies changed.” Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll documents.” Respondents further object to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents will produce the documents it has identified as being the closest match to the description in this request, including GOOG-252957-00002161 - GOOG-252957-00002161; GOOG-252957-00002162 - GOOG-252957-00002163; GOOG-252957-00002164 - GOOG-252957-00002165; GOOG-252957-00002166 - GOOG-252957-00002167; GOOG-252957-00002168 - GOOG-252957-00002170; GOOG-252957-00002171 - GOOG-252957-00002173; GOOG-252957-00006098 - GOOG-252957-00006098; GOOG-252957-00007427 - GOOG-252957-00007427.

DOCUMENT REQUEST NO. 11:

A copy of all memes pertaining to the Notice of Posting (Case No. 32-CA-176462) from the date that the Notice was posted through and including to December 31, 2019.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 11:

Respondents object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll memes.” Respondents further object to this Request

to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents will produce the documents it has identified as being the closest match to the description in this request, including: GOOG-252957-00002459 - GOOG-252957-00002459; GOOG-252957-00002460 - GOOG-252957-00002460; GOOG-252957-00002461 - GOOG-252957-00002461; GOOG-252957-00002462 - GOOG-252957-00002462; GOOG-252957-00002463 - GOOG-252957-00002463; GOOG-252957-00002464 - GOOG-252957-00002464; GOOG-252957-00002465 - GOOG-252957-00002465; GOOG-252957-00002466 - GOOG-252957-00002466; GOOG-252957-00002467 - GOOG-252957-00002467; GOOG-252957-00002468 - GOOG-252957-00002468; GOOG-252957-00002469 - GOOG-252957-00002469; GOOG-252957-00002470 - GOOG-252957-00002470; GOOG-252957-00002471 - GOOG-252957-00002471; GOOG-252957-00002472 - GOOG-252957-00002472; GOOG-252957-00002473 - GOOG-252957-00002473; GOOG-252957-00002474 - GOOG-252957-00002474; GOOG-252957-00002475 - GOOG-252957-00002475.

DOCUMENT REQUEST NO. 12:

All documents relating to or concerning Laurence Berland's Dory question to Amy Lambert pertaining to the Notice of Posting.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 12:

Respondents object to this Request on the grounds that it is vague and ambiguous as to "Laurence Berland's Dory question to Amy Lambert pertaining to the Notice of Posting."

Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks "[a]ll documents." Respondents further object to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Respondents further object to this Request to the extent that it

seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents will produce the documents it has identified as being the closest match to the description in this request, including GOOG-252957-00002476 - GOOG-252957-00002484; GOOG-252957-00002485 - GOOG-252957-00002485.

DOCUMENT REQUEST NO. 13:

All documents related to or concerning Google's consideration of and/or implementation of Project Vivian.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 13:

Respondents object to this Request on the ground that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Project Vivian was a project involving Google's legal counsel, and all communications regarding it are privileged communications and/or reflect attorney work product. Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks "[a]ll documents." Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents will produce a redacted copy of the agreement between Google and IRI Consultants that establishes the privileged nature of the project. The agreement is produced as GOOG-252957-00008169 - GOOG-252957-00008181. All other responsive documents are attorney-client privileged and/or attorney work product, have been withheld on that basis, and will be reflected on a categorical privilege log.

DOCUMENT REQUEST NO. 14:

All documents related to Google's decision to retain IRI Consultants.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 14:

Respondents object to this Request on the ground that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine, and refer back to the objections provided in response to Request No. 13. Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll documents.” Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents incorporate by reference their response to Request No. 13.

DOCUMENT REQUEST NO. 15:

All documents that reflect or record Google "chats" engaged in by (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 15:

Respondents understand the request has been withdrawn as it relates to any chats relating or referring to gender identity.

With respect to the remaining Request, Respondents object to this Request on the grounds that it is vague and ambiguous as to “chats engaged in.” Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll documents.” Respondents further object to this Request on the grounds that it seeks documents that are not relevant to the subject matter of these charges, and are not reasonably calculated to lead to the discovery of admissible evidence, and are not proportional to the needs of the case to the extent that it calls for chats between Waldman, Rivers, and/or Duke which have nothing to do with the Charges brought against Respondents. Respondents further object to this

Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information. Respondents further object to this Request to the extent that it seeks information pertaining to individuals, the disclosure of which would constitute an unwarranted invasion of the affected individuals' constitutional, statutory and/or common law rights to personal privacy and confidentiality.

Subject to the foregoing objections, Respondents will produce the documents it has identified as being the closest match to the description in this request, including:

GOOG-252957-00001319	- GOOG-252957-00001331	GOOG-252957-00002672	- GOOG-252957-00002674
GOOG-252957-00002486	- GOOG-252957-00002486	GOOG-252957-00002675	- GOOG-252957-00002678
GOOG-252957-00002487	- GOOG-252957-00002488	GOOG-252957-00002679	- GOOG-252957-00002680
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DOCUMENT REQUEST NO. 16:

**Dory question associated with this link and any documents related to or concerning
this question.**

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 16:

Respondents object to this Request on the grounds that it is vague and ambiguous as to “Dory Question,” “this link,” and “this question” because there is no link or Dory question referenced. Respondents further object to this Request on the grounds that it seeks documents that are not relevant to the subject matter of these charges, and are not reasonably calculated to lead to the discovery of admissible evidence, and are not proportional to the needs of the case to the extent that it calls for information about an unidentified subject having nothing to do with the case at hand. Respondents further object to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information. Respondents further object to this Request to the extent that it seeks information pertaining to individuals, the disclosure of which would constitute an unwarranted invasion of the affected individuals’ constitutional, statutory and/or common law rights to personal privacy and confidentiality.

Subject to the foregoing objections, Respondents are unable to identify any documents to this request due to the incomplete nature of the Request.

DOCUMENT REQUEST NO. 17:

STOP INTERNET CENSORSHIP [sic] MEME: 5194160161161216

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 17:

Respondents object to this Request on the grounds that it is vague and ambiguous as to “STOP INTERNET CENSORSHIP MEME,” and “5194160161161216” insofar as there may be multiple memes concerning internet censorship and the numbers given are completely out of context.

Subject to the foregoing objections. Respondents will produce the documents it has identified as being the closest match to the description in this request, including GOOG-252957-00002457 - GOOG-252957-00002458.

DOCUMENT REQUEST NO. 18:

Complaints, reports or other documents that triggered or influenced Google's 2019 investigations of Waldman, Rivers and Duke and any documents related to or concerning this matter.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 18:

Respondents object to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information. Respondents further object to this Request to the extent that it seeks information pertaining to individuals, the disclosure of which would constitute an unwarranted invasion of the affected individuals' constitutional, statutory and/or common law rights to personal privacy and confidentiality. Respondents further object to this Request as duplicative of Requests No. 3-6.

Subject to the foregoing objections, *see* Respondents Response to Document Request No. 1.

DOCUMENT REQUEST NO. 19:

All documents related to or concerning any conduct Google engaged in to monitor activities engaged in by (a) Sophie Waldman (b) Rebecca Rivers (c) Paul Duke (d) Kathryn Spiers (e) Kyle Dhillon and (f) Eddie Grystar prior to Google's request to question them in or about the fall of 2019.

OBJECTIONS AND RESPONSE TO DOCUMENT REQUEST NO. 19:

Respondents object to this Request on the grounds that it is vague and ambiguous as to “any conduct Google engaged in to monitor activities,” and “request to question them in or about the fall of 2019.” Respondents further object to this Request on the grounds that it is overbroad in scope and unduly burdensome insofar as it seeks “[a]ll documents.” Respondents further object to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Respondents further object to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information.

Subject to the foregoing objections, Respondents does not engage in “monitoring” as suggested by this Request.

DATED: August 22, 2021

Respectfully submitted,
PAUL HASTINGS LLP
CAMERON W. FOX
J. AL LATHAM, JR.
SARA B. KALIS
ERIC DISTELBURGER
ANKUSH DHUPAR
ELLIOT FINK



By: _____
SARA B. KALIS
PAUL HASTINGS LLP
200 Park Ave.
New York, NY 10166
sarakalis@paulhastings.com

Attorneys for Respondents
GOOGLE, LLC and
ALPHABET INC.

EXHIBIT G

Fox, Cameron W. 7:21 PM (-40 minutes ago)

to me, Sara, Al

Hi Laurie,

As previewed in my email at the end of the day on Friday (below), we are responding to your question about the subpoena category asking for IRI-related communications. It seems as if you may not have had a chance to review our written response regarding that category. You might want to take a look. The communications between Google and IRI are privileged, and we are working to complete our privilege log this week. We hope to have it to you mid-week, but obviously we are all juggling quite a bit. We will keep you posted on the delivery date as we know more.

Best,

Cameron

From: I burgess <lburgess@burgess-laborlaw.com>

Sent: Friday, August 27, 2021 4:34 PM

To: Fox, Cameron W. <cameronfox@paulhastings.com>

Cc: Kalis, Sara <sarakalis@paulhastings.com>; Latham, J. Al <allatham@paulhastings.com>

Subject: [EXT] Re: Kent Walker

Fantastic - thanks. I may have more questions. I was in collective bargaining all day long for a union client so have not been able to turn back to this case till now.

Thanks again,

Laurie

On Fri, Aug 27, 2021 at 4:32 PM Fox, Cameron W. <cameronfox@paulhastings.com> wrote:

Laurie,

I have just responded to your question about the subpoena. We will respond separately on your question about the IRI agreement. More to follow on that.

Thanks,

Cameron

From: I burgess <lburgess@burgess-laborlaw.com>

Sent: Friday, August 27, 2021 1:12 PM

To: Fox, Cameron W. <cameronfox@paulhastings.com>

Cc: Kalis, Sara <sarakalis@paulhastings.com>; Latham, J. Al <allatham@paulhastings.com>

Subject: [EXT] Re: Kent Walker

Got it; will do going forward.

On Aug 27, 2021, at 1:07 PM, Fox, Cameron W, <cameronfox@paulhastings.com> wrote:

+ Al Latham

Laurie,

Please include Al, as well, on emails to our firm. We will review and respond as soon as we are able.

Cameron

From: I burgess <lburgess@burgess-laborlaw.com>

Sent: Friday, August 27, 2021 12:59 PM

To: Kalis, Sara <sarakalis@paulhastings.com>; Fox, Cameron W. <cameronfox@paulhastings.com>

Subject: [EXT] Kent Walker

Good afternoon. I'm planning on issuing a subpoena to Mr. Walker for document production and a general subpoena for other materials. I will gladly have these hand-delivered if you do not wish to accept service. Please let me know asap as I would like to send them today.

Also, I do not believe that your response to my request regarding IRI consultants is complete. As far as I can see, you produced one document only -- a heavily redacted contract dated January 2019. Surely there were numerous communications regarding the retention of this firm. I understand that some of the materials may have redactions, but I believe that these materials should be produced with a privilege log. Please let me know if you'd like to discuss this. My strong preference is to resolve this (and other residual matters) without the Judge's involvement.

Thanks,

Laurie

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to me, Sara, Al

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Thanks,

Laurie

EXHIBIT H

Kalis, Sara Fri, Aug 20, 3:47 PM (10 days ago)

to me

Laurie,

You have accurately described our conversation.

Thank you,

Sara

From: I burgess <lburgess@burgess-laborlaw.com>

Sent: Friday, August 20, 2021 6:36 PM

To: Kalis, Sara <sarakalis@paulhastings.com>

Subject: [EXT] Unconditional withdrawal of subpoenas

Sara - it is my understanding that you are unconditionally withdrawing the subpoenas that you issued to my clients.

Separately, you are asking if I would agree to accept service of a new subpoena that seeks any tape-recordings of communications of Google managers and supervisors. I agreed to discuss this with my clients.

I understand that your withdrawal of the original subpoenas to my clients is not conditioned upon my agreement to accept this new, narrowly limited subpoena.

Finally, I advised you, as a courtesy, that we intend to introduce your subpoena to my clients into the record as evidence of animus and reserve the right to file a ULP over this matter.

Kindly confirm that I have accurately described our discussion and resolution of this issue. Once you confirm, I will get back to you about your new request as soon as I have an opportunity to discuss this with my client.

Thank you.

Laurie M. Burgess, Attorney

(312) 320-1718 (cell)

Kalis, Sara Fri. Aug 20, 3:47 PM (10 days ago)

to me

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Thank you,

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Kindly confirm that I have accurately described our discussion and resolution of this issue. Once you confirm, I will get back to you about your new request as soon as I have an opportunity to discuss this with my client.

Thank you.

Laurie M. Burgess, Attorney

(312) 320-1718 (cell)

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

A. In the following Requests:

1. “You” or “your” refers to Charging Party Kathryn Spiers, and/or their agents and representatives.

2. The term “Respondent” refers to Google, LLC (Google) and Alphabet Inc. (Alphabet), a single employer, and includes its owners, officers, agents, representatives, successors, and assigns.

3. The term “Complaint” refers to the Third Amended Complaint, as amended on July 26, 2021, on file in this action.

4. “Person” or “persons” means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.

5. “Union” refers to the Communications Workers of America, AFL-CIO, and/or its agents or representatives.

6. “Document” shall include, without limitation, any and all of the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand, now or at any time in your possession, custody, or control: agreements, communications, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, calendars, diaries, reports, notebooks, plans, drawings, sketches, maps, drafts, letters, resumes, any marginal comments appearing on any document, and all other writings.

Without limitation of the term "control" as used in the preceding sentence, a document is deemed to be or to have been in your control if you have or had the right to secure the document or a copy thereof from another person or public or private entity having actual possession thereof.

If you are aware of existing documents responsive to the following requests that were formerly but are not presently in your possession, custody, or control, identify each such document and the person(s) with possession, custody, or control of each such document.

If you are aware of documents that would be responsive to the following requests and that were one time in your possession, custody, or control but that no longer exist, identify each such document, state what disposition was made of each such document, by whom, the date or dates on which each such disposition was made, and why each such disposition was made.

If you are aware of documents that would be responsive to the following requests which were destroyed, discarded, or otherwise disposed of for whatever reasons, identify each such document, state what type of spoliation occurred with respect to the document, by whom, the date or dates on which the spoliation occurred, and why the document was spoliated.

These subpoena requests are continuing in character. If additional responsive documents come to your attention after the date of production, such documents must be promptly produced.

This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.

7. "Identify," "state the identity of," and "identification":

a. When used in reference to an individual, shall mean to disclose his or her full name, present or last known home and business address and telephone numbers, and present or last known occupation, employer and job title or description;

b. When used in reference to an organization of any kind, shall mean to disclose its full name, its date and place of incorporation (if applicable), the address of its principal place of business, and its telephone numbers;

c. When used in reference to a document, shall mean to disclose the type of document (letter, memo, etc.), the identity of the author(s) or originator(s), the identity of each person to whom the original or a copy thereof was addressed or delivered, the identity of each person known or reasonably believed by you to have present possession, custody, or control of the original or a copy thereof, and a brief description of the subject matter of the document.

8. The singular form of a word shall include the plural and the plural shall include the singular.

9. "And" as well as "or" are used in both the conjunctive and disjunctive sense, and references shall be construed either as singular or plural as necessary to provide the most complete production in response to any request.

10. When used in inference to a document, "relate to" shall mean any document that constitutes, supports, mentions, refers to, reflects, or in any other way relates to the information requested to be produced.

11. "Communications" shall include every disclosure, transfer, and exchange of information, whether orally or by document or some other medium.

12. "Any," "each," and "all" shall be read to be all-inclusive and to require the production of each and every document responsive to the request in which such terms appear.

13. "AWU" shall mean the Alphabet Workers Union (otherwise known as AWU-CWA).

B. You are to produce all original documents as well as non-conforming copies thereof, without limitation, and any copies with markings or other matter not appearing on the face of the original document, including "blind" copies for persons other than the recipients shown on the document.

C. In the event you claim any document requested is exempt from this subpoena by reason of privilege or other protection, for each document:

1. Identify the document;
2. State the nature of the privilege or protection claimed (e.g., attorney-client); and
3. Provide a statement of the factual basis for each claim of privilege or protection.

D. Unless otherwise indicated, these requests for documents cover documents created, sent, or received during the period of July 1, 2019 through the present.

E. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in their native format. The file produced should maintain the integrity of all source, custodian, application, embedded, and related file system metadata. All hidden text (e.g. tracked changes, hidden columns, mark-ups, notes) shall be expanded and rendered in the produced file. For files that cannot be expanded, the native files shall be produced.

F. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

DOCUMENTS REQUESTED PURSUANT TO SUBPOENA

1. Any photographs, video tapes, audio tapes, or other recordings by whatever means produced which may be relevant to the claims in the Complaint including photographs, tapes, or recordings of any agent, employee, or former agent, or former employee of Respondent in Your possession or available to You.
2. Any notes, diaries, correspondences, memoranda, or other documents transmitted, exchanged, provided to, discussed with or received by You or anyone on Your behalf (excluding Your legal counsel) relating to any claims asserted in the Complaint, including Respondent's investigation.
3. Any document, of any type, and held in any medium, created by You as a result of Respondent's investigation into the issues raised in the Complaint.
4. Any communications, including emails, text messages, and private social media messages involving You in which the issues raised in the Complaint were discussed with any other Charging party.
5. Any communications, including emails, text messages, and private social media messages involving You in which the issues raised in the Complaint were discussed with AWU.
6. Any communications, including emails, text messages, and private social media messages involving You in which the issues raised in the Complaint were discussed with any member of the press, including reporters, bloggers, and formal journalists and their agents.
7. Any communications, including emails, text messages, and private social media messages involving You in which the issues raised in the Complaint were discussed with the Union.
8. Any communications, including emails, text messages, and private social media messages involving You in which the issues raised in the Complaint were discussed with any other Person (excluding Your legal counsel).